RIGHTS AND DEMOCRATIC ACCOUNTABILITY: A COMPARATIVE STUDY ON IRREGULAR IMMIGRATION IN GREECE, SPAIN AND TURKEY

A PhD. Dissertation

by

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Ankara

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To my grandmother Ayşe

RIGHTS AND DEMOCRATIC ACCOUNTABILITY: A COMPARATIVE STUDY ON IRREGULAR IMMIGRATION IN GREECE, SPAIN AND TURKEY

Graduate School of Economics and Social Sciences

of

İhsan Doğramacı Bilkent University

by

NAZLI ŞENSES

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I certify that I have read this thesis and have found that it is fully adequate, in scope and in quality, as a thesis for the degree of Doctor of Philosophy in Political Science.

Assistant Prof. Dr. Saime Özçürümez
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ABSTRACT

RIGHTS AND DEMOCRATIC ACCOUNTABILITY:
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PhD, Department of Political Science

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This research is a comparative politics study, focusing on the particular irregular immigration policies and politics of three countries: Greece, Spain and Turkey. The research is concerned with the extent of the rights irregular immigrants can 'enjoy' in the democratic states where they reside and work. The study questions if there is a divergence or convergence among Greece, Spain and Turkey in the way they treat irregular immigrants in relation to the recognition of these immigrants' fundamental human rights. The study also questions whether or not civil society participation and judicial review, as democratic accountability mechanisms, can also function as liberal constraints on the state in its regulation of irregular immigration and immigrants' rights. The theoretical basis of the study derives partly from the

comparative politics literature on accountability and state society relations, and partly from the literature on immigration policy-making. The main reason for comparing Greece, Spain and Turkey is because the countries display certain immigration relevant similarities arising from geographical proximity, but also they have distinct patterns of policies when it comes to protective measures concerning immigrants. As part of the research, a documentary analysis of relevant policy documents, such as reports of civil society organizations, policy briefs, and immigration laws and regulations was conducted. In a comparative analysis of this documentary data, the study sought to identify the similarities and differences between the policies of Greece, Spain and Turkey relating to the recognition and protection of irregular immigrants' rights. In addition, in-depth interviews with experts on immigration policy in Greece, Spain and Turkey were also conducted. The goal of the interviews was to find out to what extent democratic accountability mechanisms at a national level, such as the activism of pro-migrant organizations, human rights groups, trade unions and other civil society organizations, together with court decisions, influence the state's protection of the rights of irregular immigrants.

Keywords: irregular migration, human rights, democratic accountability, civil society, courts, Spain, Greece, Turkey

ÖZET

HAKLAR VE DEMOKRATİK HESAPVEREBİLİRLİK:
YUNANİSTAN, İSPANYA VE TÜRKİYE'DEKİ DÜZENSİZ GÖÇ ÜZERİNE
KARŞILAŞTIRMALI BİR ÇALIŞMA

Şenses, Nazlı

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Bu araştırma üç ülkenin (Yunanistan, İspanya ve Türkiye) düzensiz göç politikaları üzerine odaklanan bir karşılaştırmalı politika çalışmasıdır. Düzensiz göçmenlerin yerleştikleri ve çalıştıkları demokratik devletlerde yararlanabildikleri haklarının kapsamı ile ilgili araştırma yapmaktadır. Daha net bir ifadeyle bu çalışma Yunanistan, İspanya ve Türkiye arasında düzensiz göçmenlerin temel insan haklarını tanımalarıyla ilişkili olarak bu devletlerin söz konusu göçmenlere muameleleri arasında ayrışma ya da benzeşme olup olmadığını sorgulamaktadır. Bu çalışma ayrıca demokratik hesapverebilirlik mekanizmalarından sivil toplum katılımı ve yargı denetiminin, düzensiz göçün ve göçmenlerin haklarının düzenlenmesiyle ilgili devlet üzerindeki liberal kısıtlamalar olarak bir işlev yüklenip yüklenmediğini sorgulamaktadır. Çalışmanın teorik temeli hem hesapverilebilirlik ve devlet toplum

ilişkileri üzerine karşılaştırmalı politika literatüründen, hem de göç politikaları literatüründen gelmektedir. Yunanistan, İspanya ve Türkiye'yi karşılaştırmanın temel nedeni bu ülkelerin göçle ilgili olarak coğrafi yakınlıktan kaynaklanan benzerlikler göstermeleridir; fakat göçmenlerle ilgili koruyucu önlemlerlere geldiğinde bu ülkelerin farklı politika modelleri vardır. Bu durum da karşılaştırma çalışma için elverişli bir durum ortaya çıkarmaktadır. Araştırmanın bir bölümü, sivil toplum kuruluşlarının raporları, politika özetleri ve göç yasaları ve düzenlemeleri gibi ilgili politika dokümanlarının belgesel analizini kapsamaktadır. Bu belgelerin karşılaştırmalı analizinde, düzensiz göçmenlerin haklarının tanınması ve korunması ile ilgili olarak Yunanistan, İspanya ve Türkiye'nin politikaları arasındaki benzerlikleri ve farklılıkları tespit edilmeye çalışılmıştır. Araştırmanın bir diğer bölümündeyse, Yunanistan, İspanya ve Türkiye'deki göç politikası uzmanlarıyla derinlemesine mülakatlar yapılmıştır. Bu mülakatların amacı, göçmen organizasyonlarının, insan hakları gruplarının, sendikaların ve diğer sivil toplum organizasyonlarının etkinlikleri ve yargı denetimi gibi demokratik hesap verme mekanizmalarının ulusal düzeyde devletin düzensiz göçmenlerin haklarını korumasında ne derece etkili olduğunu ortaya çıkarmaktır.

Anahtar kelimeler: Düzensiz göç, insan hakları, demokratik hesapverilebilirlik, sivil toplum, mahkemeler, İspanya, Yunanistan, Türkiye

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hospitable and friendly but also very generous in offering their help on my work with their comments and criticisms. Above all, I am very much indebted to Peo Hansen, who worked with me on the design and drafting of this study. I am also sincerely grateful to Carl-Ulrik Schierup, Charles Woolfson, Anna Bredström, and Branka Likic-Brboric for their valuable comments on the study.

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CHAPTER 1

INTRODUCTION

1.1. Statement of the Problem

Immigration to democratic industrial states has been on the rise since the end of World War 2. This development has been explained through various factors, such as the classical pull-push argument, which emphasizes the demand for foreign labour in the industrialized world coupled with unemployment in non-industrialized regions of the world; the emergence of transnational kinship and network relations, which ease the mobility of people; and the development of transportation technology. The economic factors that have triggered immigration are especially worth highlighting: in post-war Europe, immigration played a crucial role in fostering the economic growth of the 1950s and 1960s by providing new labour, thereby preventing labour shortages in times of expansion. Thus, some argue that Europe's post-war economic miracle would not have been possible without immigration. However, as economic expansion came to a halt in the 1970s and 1980s, a discourse emerged that questioned the benefits of immigration and even considered it unnecessary from then on (Hollifield, 1992).

At the same time, a "liberal paradox" has developed for liberal democratic

states: On the one hand, economic forces push states towards greater openness, including opening markets for foreign labour, in order to preserve their competitiveness in the global economy. On the other hand, a political concern with border control and sovereignty, together with nationalist sentiment, place immigration within a security discourse and demand border closures and other restrictionist policies (Hollifield et al., 2008). Nevertheless, immigration has continued to persist against this backdrop of restrictionist discourse and policies. The International Organization for Migration (IOM) reports that currently there are approximately 214 million migrants in the world making up nearly 3.1 percent of world population. Of these 214 million people, roughly 20 to 30 million are estimated to be undocumented (IOM, Facts & Figures, Global Estimates and Trends, n.d.). According to Hollifield (1992), the persistence of immigration is not solely due to market forces. Rather, there are also political constraints on the liberal states that block the imposition of stronger restrictionist policies. One of the most significant political factors is the granting of rights to the immigrants and the development of inclusive legal cultures that protect the immigrant from the arbitrary power of the state (Hollifield, 1992: 8). As Hollifield puts it, "[t]he attraction of markets (including the demand for cheap labour) and the protection given to aliens in rights-based regimes taken together explain the rise in immigration and its persistence in the face of economic crisis, restrictionist policies, and nationalist (anti-immigrant) political movements" (1992: 216). However, one should still question the extent to which immigrants, as non-citizens, are actually able to enjoy their fundamental human rights on an equal basis with the citizens of the country they migrated.

IOM reports that immigration "is now an essential, inevitable and potentially beneficial component of the economic and social life of every country and region" (IOM, Global Estimates and Trends, n.d.). If this is the case for migrant receiving countries and regions then one should ask whether or not migration is also as beneficial for the economic and social life of every migrant, as it is for every country and region into which these migrants are moving. According to Hollifield (1992: vii), "[p]eople are not just commodities: can an individual reside and work in a liberal society without enjoying the rights that are accorded, in principle, to every member of society?" According to him, liberal constraints should not allow such discrimination, so states should be obliged to grant rights to immigrants as well. However, the living and working conditions of undocumented / irregular immigrants today in many liberal democratic states show that in reality an individual can reside and work in a liberal society without enjoying the rights that are, in principle, supposedly granted to every member of the society.

Bearing all this in mind, I am concerned in this study with the extent of the rights irregular immigrants can enjoy in democratic states, where they may reside and work for many years. Thus, I question whether irregular immigrants can gain access to their fundamental human rights, such as access to the free health care and education that the liberal state grants in principle to every member of the society. I also question whether or not civil society participation and judicial review can function as "liberal constraints" on the state in its regulation of irregular immigration and immigrants' rights.

1.2. The Research Questions

This study can be categorized within political science, and specifically within comparative politics research. The research reported here, focusing on immigration policies and politics, was conducted in three different national settings, Greece, Spain and Turkey, where the volume of irregular migrants is significant, in order to permit a comparative analysis of the following questions:

- Is there divergence or convergence among Greece, Spain and Turkey in the way they treat irregular migrants in relation to the recognition of these immigrants' fundamental human rights?

- What is the role of democratic accountability mechanisms (civil society activism and judicial review) in the protection of the rights of irregular immigrants who are already living in the receiving country?

The study contributes to the related research fields and theoretical knowledge in three main ways. Firstly, it expands our knowledge of irregular immigration by offering a distinctive perspective that focus on the formal protection of these immigrants' rights. Secondly, the study adopts a rather different theoretical framework to existing ones, which also study similar topics concerning immigration politics, policies and liberal constraints. Thirdly, the research primarily uses a comparative method of inquiry, and for that reason the results of the analysis provide specific and original comparative information on Greece, Spain and Turkey in this specific area of inquiry. That is, no previous study has compared these three countries concerning this specific research topic. Below, I elaborate further on these points.

In total, there are now a significant number of studies on irregular immigration, as the topic has established and consolidated its importance for the lives of people and states regarding the global flow of people. Migration generally, or

more specifically international migration, is an area that has been studied within various social science disciplines, such as sociology, anthropology, demography, economics, politics and psychology, as well as through multi-disciplinary research. Irregular immigration is not an exception to this, including both studies within various disciplines, and also ones that adopt multi-disciplinary perspectives. Given the multi-disciplinary nature of the field, in what follows, I categorize the existing literature on irregular immigration in terms of the main themes and concerns that the literature addresses in order to situate my own study within this existing body of work, regardless of the main discipline of the study.

First of all, there is a significant group of studies, which focuses on the general characteristics of irregular immigration flows within the global regime of international immigration. These studies analyse these flows in detail and explain the overall social, economic and political atmosphere in the sending and receiving countries, together with the socio-economic and cultural characteristics of the immigrants involved in these irregular flows. These studies also provide statistics on the flows, so as to, in some way, document the 'undocumented' (for some examples see, İçduygu, 2007B; Monzini, 2007).

The second group of studies focuses on the political economy of irregular immigration and provides a structural analysis of the problem of irregular immigration. These studies are concerned with the linkages between irregular immigration and the labour market structures of the sending and receiving countries. They focus on globalization, neo-liberal policies and politics as underlying drivers of irregular immigration. Therefore, this group of work includes studies analyzing the global structural causes and consequences of irregular immigration (for some

examples, see Likic-Brboric, 2007; Overbeek, 2002).

While these two groups of works looking at the flows themselves and the political economics of the issue are not directly related with the main theme of this study, they nevertheless bear on my topic as their findings provide the main outline of the issue and demonstrate the general significance of studying irregular immigration. Reference to these studies is also necessary in order to better identify the gap in the literature and place my study within the overall literature on irregular immigration. For this reason, in the second chapter, where I review the literature on irregular immigration, I refer to various works from both of these groups. The next two groups of work on irregular immigration focus on the policies towards immigrants and their life situations – themes which are directly related to this study.

The third group of work, studies looking at policies on irregular immigration, usually deals with the measures and policies designed to control and curtail irregular immigration. Most of the time, these studies adopt a state centric focus on the issue by placing national interests and sovereignty at the centre of the discussion. In other words, the main concern is with issues such as the 'protection of the borders', 'preservation of state sovereignty' and 'illegal crossing of the borders', whereas there are not many studies that adopt an original and critical perspective about these notions in relation to irregular immigration (for some examples, though, see Broeders and Engbersen, 2007; Spijkerboer, 2007). My work relates to this group of studies as it also focuses on the policies of irregular immigration. However, it diverges from the state centric studies within this group by focusing solely on the person, i.e. the irregular immigrant, rather than the territory, or the border, or the market.[1] In this

[1] There are also studies that focus on the regularization of irregular immigrants. However, these are rather few in number compared to others. These studies also adopt a state centric focus as well, by

way, it fills a gap in the literature concerning the perspective that is focused on the policies that protect the individual rather than the state.[2]

The fourth and last group of work investigates the life situations of irregular immigrants living within the receiving states in various ways. Some studies treat irregular immigrants as a vulnerable group and concentrate on the hardships and deprivation they face in their daily routines. Others focus on the ways in which these immigrants accommodate and cope with their irregular position within the receiving state, while another set of studies reconstruct the basic understandings of citizenship and state sovereignty based on the life situations of irregular immigrants (for some examples, see Taran, 2000; Varsanyi, 2006). My work is related to this group of studies as well, as I also focus on 'life situations' by concentrating on the rights granted to irregular immigrants. However, my study adopts a rather distinct perspective by bringing in the perspective of the state and other non-state political actors as well. In the literature on the life situations of irregular immigrants, there is a lack of detailed analysis of the politics and policies concerning the rights granted to irregular immigrants living within the receiving state. There are studies that carefully analyze which rights irregular immigrants are able to access or not, along with the mechanisms that exploit the material and moral power of the immigrants. However, there are no studies providing a systematic and comparative analysis of the position adopted by state and non-state actors towards this issue. By focusing on the liberal constraints on this issue my study seeks to fill this gap in the literature.

Therefore, I may also say that my research question is located at the intersection of the studies on control policies and studies on the life situations of

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focusing generally on the success of regularization in curtailing the number of irregular immigrants within the state.

[2] An article with a very similar focus on the main concerns of this study is recently published (Laubenthal, 2011).

irregular migrants. The literature on the life situations of irregular migrants shows what rights irregular migrants may or may not enjoy. However, it lacks a state perspective on the matter that could examine why and under what conditions states aim to and do protect the rights of irregular migrants as persons eligible for protection under the rubric of international law of human rights and the general commitment to liberal democratic principles. Conversely, the literature focusing on policy analysis of states towards irregular migrants almost completely fails to consider state policies in terms of or in relation to the fundamental rights of irregular immigrants. Advocates of the necessity for this approach tend to remain confined to the realm of normative accounts of civil society activism rather than empirical academic research. Therefore, responding to this research question will fill the gap in the literature on irregular migration caused by the two lines of research (on policies and life situations/rights) currently developing almost independently of each other.

Adding to this contribution to our knowledge and understanding of irregular immigration, my study, through its rather different theoretical orientation, also contributes to studies concerned with immigration policy making and the liberal constraints restricting the scope of action of the nation state. Chapter 3 on the theoretical framework analyses in detail the existing works and explains how my study differs from these. However, to formulate the distinction briefly here as well, I would start by first pointing out that the inspiration for the overall theoretical framework adopted in this study is derived from a somewhat different literature that supports existing studies, namely the literature on democratization.

Studies focusing on the protection of the rights of immigrants, and the ones looking at the politics of immigration, have both come to focus on the liberal

constraints that force states to respect the rights of immigrants on the same basis as their citizens. One impressive and illuminating body of work considers various global constraints, such as the international human rights discourse/regime as the core mechanisms that prevent states from arbitrarily restricting the rights of immigrants (for some examples, Soysal, 1994; Jacobson, 1997). Other studies, some of which were developed to critique the former group, focused on domestic constraints on states (for some examples, Joppke, 1998; Freeman, 1995; Hollifield, 1992). For example, Joppke (1998) argues that it is national liberal constitutions and national courts acting according to those constitutions, rather than an international human rights discourse, that have in fact been most influential in protecting the rights of foreigners from the discretionary power of host states. A third group of studies focused on the actions of civil society organizations and their potential to act as a liberal constraint upon the state in the protection of the rights of immigrants. However, I would like to note that these studies are rather few and less developed compared to those which look at liberal constitutions and courts.

My study is inspired by the second group that looks at the liberal constraints within domestic structures. However, while establishing my theoretical framework I also utilize particular themes and concepts from the democratization literature in order to more comprehensively answer the research questions. Thus, I use the term democratic accountability mechanisms to refer to two rather distinct political mechanisms, civil society activities and judicial actions, which put pressure on the state in its treatment of immigrants. In other words, I analyse and discuss the potential of courts and civil society working as 'liberal constraints' by viewing them as democratic accountability mechanisms. This enables me to consider both the

power of civil society organizations and judicial review at the same time in a meaningful and original theoretical framework. Thus, the theoretical framework of this research contributes to existing studies on immigration politics and policy-making by adding a novel perspective to the issue.

The final contribution of my research derives from the fact that it provides an original comparison between three countries. In fact, there are no studies which compared Greece, Spain and Turkey in a systematic manner on any immigration issue. Therefore, my study provides valuable new comparative information about these three countries, thereby opening the way for further comparative research concerning these countries and similar others. In the next section, I justify why I chose to compare these three particular cases in order to clarify the contribution of the research in this respect.

1.3. A Note on Methodology and Data Collection

In this study, I employ case study as the main method of inquiry. I study Greece, Spain and Turkey in order to arrive at an overall answer to the previously mentioned research questions, rather than studying these countries for their own sake. That is, this study employs a *comparative* case study method instead of focusing on a single case. By following a comparative perspective that asks the research questions in several settings, I aim to observe particular similarities and/or divergences across the cases that will make my explanations more powerful. Specifically, I aim to offer a meaningful explanation of the relationship between democratic accountability mechanisms and the protection of the rights of irregular immigrants through a symmetrical analysis of the three cases.

The first reason for focusing on Greece, Spain and Turkey is that Mediterranean countries, as noted by many scholars, have become attractive final destinations, as members of the European Union (EU), and/or popular transit or emerging migration countries, such as Turkey. Consequently, they have been receiving growing numbers of irregular migrants, making them critical cases for research on irregular migration. A second reason for comparing these three countries is to be able to control the effect of certain important structural characteristics that might be affecting the treatment of irregular migrants in the first place, such as the demand for irregular migrant labour in certain economic sectors, size of the informal economy and type of welfare regime. Third, when it comes to the treatment of migrants in general, there appear to be differences among these countries, leading one to expect to observe also differences in relation to the treatment of irregular migrants in particular. According to the Migrant Integration Policy Index, in terms of best practice on integration policies, Spain ranks 8th among 31 migrant receiving countries[3] with "slightly favourable" integration policies, whereas Greece ranks 16tth with "slightly unfavourable" policies on integration (MIPEX, 2011).[4] Thus, there is a clear difference between Greece and Spain in terms of the integration policies offered to immigrants in general, so we may expect that such divergence will be observed also in terms of the treatment of irregular immigrants and recognition of their human rights, and that such divergence can be explained by the diverging democratic accountability mechanisms operating at the national level, such as the

[3] The countries included in the MIPEX are; Sweden, Portugal, Canada, Finland, Netherlands, Belgium, Norway, Spain, USA, Italy, Luxembourg, Germany, United Kingdom, Demark, France, Greece, Ireland, Slovenia, Czech Republic, Estonia, Hungary, Romania, Switzerland, Austria, Poland, Bulgaria, Lithuania, Malta, Slovakia, Cyprus, and Latvia. (They are sorted by rank in terms of best practice on integration policies)

[4] Migrant Integration Policy Index does not have figures for Turkey.

activism of pro-migrant organizations, human rights groups, trade unions and other civil society organizations and movements.

In this study, the main indicator of a state's recognition of irregular migrants in relation to their fundamental human rights is national legislation allowing irregular migrants' access to fundamental rights, such as health care and education for migrants' children. Data on this part of the research was gathered mainly through a documentary analysis of related policy documents, such as reports of civil society organizations, policy briefs, and especially immigration laws and regulations. In a comparative analysis of the data thus gathered I sought to find out if there were any divergences among Greece, Spain and Turkey in the way they treated irregular immigrants in relation to the recognition of their fundamental human rights, and to what extent they protected the rights of irregular migrants.

Data on the extent to which democratic accountability mechanisms at the national level, such as the activism of pro-migrant organizations, human rights groups, trade unions and other civil society organizations and movements impact the treatment of irregular migrants was gathered through in-depth interviews with experts on immigration policy in each country. The interview questions were intended to determine the level of influence of such mechanisms in pushing states to recognize the rights of irregular immigrants. In other words, the interviews were used to find out to what extent these mechanisms are effective during migration policy making in ensuring the protection of the rights of irregular immigrants.

1.4. The Organization of the Study

In the next chapter, 'the Analytical Framework', I focus in depth on the

notion of irregular immigration in order to clarify with which specific type of immigration this study is concerned. For that reason, I discuss various definitions of irregular immigration and the existing approaches towards irregular immigration. I specifically contrast the approach which considers immigrants to be 'illegal' and calls this type of immigration 'illegal immigration' with another approach which recognizes these immigrants as vulnerable groups, highlights the fact that they are subject to discriminatory processes, and draws attention to the sometimes forgotten fact that these people are (or should be) recipients of human rights as well. In the second part of the chapter, I review the existing literature on irregular immigration. This review has two functions regarding the development of my discussion. First of all, the review aims to deepen our understanding of irregular immigration, and hence reveal the necessity of posing the research questions of this study in order to gain a complete picture of irregular immigration in our times. Secondly, the literature review situates the discussions of this research within the existing literature on irregular immigration.

In chapter 3, the Theoretical Framework, I explain the main connections and borders of the theoretical discussion within which the research questions are to be answered. Thus, I bring together, review and evaluate the existing literature investigating similar types of research questions. Thus, it is in this chapter that I refer to the possible contributions of the democratic accountability mechanisms to the official protection of the rights of irregular immigrants. In this chapter I also review the immigration literature looking at the politics of immigration in general, as well as that having a specific focus on civil society activism and/or the involvement of courts.

In chapter 4, I describe the methodology of the research, explaining how the research was conducted and which techniques were utilised. In this chapter, I also justify why I compare three national cases, while trying to relate my case selection to the general principles of the comparative case study method. The chapter then describes the fieldwork conducted in Greece, Spain and Turkey in order to explain the dynamics and parameters of the qualitative interviews I conducted, and the documents I analyzed. Appendices A, B and C complement the information given within this chapter on the study's research methodology by presenting further information on the interview questionnaire, the interviewees and documentation.

In chapters 5, 6 and 7, I analyse the main concerns and questions of the research for Greece, Spain and Turkey respectively. Each chapter provides a complete picture of the main findings of the research for each case in line with the theoretical framework provided in Chapter 3. Thus, I look at the role of democratic accountability mechanisms in the protection of the rights of irregular immigrants for each case by utilising interview and documentary data. It is important to note that the analysis of the interviews and documents is given separately for each case in a systematic and parallel manner, as is reflected in the identical headings and sub-headings of the three case chapters. In this way, the reader is better able to compare the cases back and forth across the three chapters.

The last chapter provides the overall analysis and conclusions of the study in a comparative manner, by bringing together the information on all three of the cases. That is, the findings presented separately in Chapters 5, 6, 7 are integrated and re-explained, this time in direct relation to each other. In this way, the main propositions of the research are evaluated in light of the comparative analysis. The chapter ends

with my conclusions and summarization of the findings of this research, its limitations, and its contribution to the literature.

CHAPTER 2

ANALYTICAL FRAMEWORK

This chapter is composed of two main parts. In the first part, I aim to define irregular migration and the causes behind its emergence. I discuss two different approaches that have emerged around debates on irregular migration: "illegal" versus "rights-based". In the second part of the chapter, I review the literature on irregular migration in general, and place the contribution of this study within the existing literature on irregular migration.

2.1. Studying Irregular Migration

Membership of a nation-state, i.e. being a citizen of a state, grants an individual certain rights, but also sets certain obligations. The scope of these rights and duties varies for each state. However, states not only regulate the actions of their own citizens; they also govern the actions of foreigners who enter their territory. States identify certain obligations and (in some places) certain rights for those people who seek to enter and reside, for different reasons and for varying lengths of stay. In other words, certain immigration acts, policies, or regimes emerge that regulate the

actions of non-citizens, and also the state in its treatment of those people. Failure to control the actions of non-citizens constitutes one of the major challenges to the sovereignty of the state in the official approach in many countries. Thus, nation states aim to attain full control over the governance of non-citizens entering their territory, with the intention of preventing the entry and residence of unwanted guests. Nonetheless, despite a plethora of actions, legislation, policies and practice designed to prevent and combat the unwanted or unauthorized irregular movement of foreigners across their borders, most countries contain substantial numbers of irregular migrants. These groups of immigrants are described in various ways, ranging from illegal to undocumented, and from unwanted to irregular. Such disagreements over how to define the status of these types of foreigners remain far from resolved. In the next section, I review the various definitions given in the literature before identifying the definition I adopt in this study.

2.1.1. Defining and Explaining Irregular[5] Migration

According to Samers, "undocumented immigration is defined, in relation to what is legal, by national sovereign states" (2001: 131-132). As already mentioned above, states specify certain rules governing the conditions of entry, exit and residence of non-citizens. A person becomes an irregular immigrant if they break some or all of these rules. From this common starting point, the literature has produced various definitions or conceptualizations of irregular immigration.

[5] Throughout this study, I choose to use the term "irregular" to refer to the type of immigration I study, and to the people who are involved in this type of immigration. The reasons behind this choice will become clear as the chapter proceeds with the definition and description of the discourses on the rationale for migration.

For example, Tapinos (as cited in Haidinger, 2007: 6) lists six different categories of irregular immigrants. First, an immigrant who is staying in the country legally through a residence permit, might be working illegally. Secondly, an immigrant who has entered legally, such as with a tourist visa, could be living and working within the country illegally. The third category is the same as the second except that the illegal resident does not work. The fourth category is for a migrant who has entered the country clandestinely and works illegally without a residence permit. The fifth category is the same as the fourth except that the migrant does not work. Finally, there are migrants who have entered clandestinely, but who have later gained a residence permit, for example through a regularization program, yet work illegally.

By contrast, Samers (2001: 132) provides a brief definition of irregular immigration. For him, undocumented migration mainly involves either clandestine entry, by entering the country without abiding by the laws regulating entry, or overstaying a visa. Samers also points out that, based on this understanding of undocumented immigration, "informal employment" and "illegal residence" should be seen as two distinct terms, although "in the popular press and imagination, there is a tendency to conflate undocumented immigration, informal employment, and illegal residence". Instead, we should think of them as "distinct, yet often intertwined" (Samers, 2001: 132). Therefore, unlike Tapinos, Samers does not consider informal or illegal employment as a definitional characteristic of irregular migration. Rather, he views informal work as a distinct category which could be related to irregular migration. A similar definition of irregular migration emerges from Russel King's (2002) identification of two main mechanisms of irregular migration: illegal entry

using forged documents or through unprotected borders; and legal entry followed by overstaying the visa. This distinction implies that irregular migration is basically illegal entry and residence in a receiving state. However, as with Tapinos's categorization, in most of the definitions, informal work also appears as an aspect of irregular immigration. For example, Krause (2008: 331-348) uses the term "undocumented migrants" and conceptualizes the term as referring to people who are neither citizens of the receiving country nor have any formal right to residence and work.

Identifying the reasons for irregular migration is as challenging as defining the concept. The aim of this chapter is neither to come up with an overarching definition of irregular immigration nor to find out the causal mechanisms behind irregular immigration in general. Instead, the aim is to refer to some of the discussions on the rationale for irregular migration in order to situate the definitions and analyses adopted in this study.

King (2002) notes that, although it is difficult to document the exact numbers of irregular immigrants, there is a consensus that 'illegal' immigration has been increasing. For example, in the European Union (EU), the number of illegal or irregular entrants was approximately five times more in 2000 than 1994 (King, 2002: 96). According to King, this was mainly because of push factors operating in the migrants' countries of origin, together with the ever-growing restrictions in terms of migration control in Western European countries that defines more and more migrants as 'illegal'.

The factors 'forcing' people to migrate illegally to other countries and stay

illegally include, among others, poor economic conditions, ethnic conflict and civil wars, and unbearable climate conditions. As Likic-Brboric puts it,

> [t]he implementation of neo-liberal policy packages both in developing and former socialist countries have led to rising inequalities, poverty, unemployment, deindustrialization, expansion of informal and illegal economies, state capture, violent conflicts, state collapse and new emergencies. (2007: 167).

Such socio-economic impacts of globalization in these countries could easily be considered as legitimate reasons for a person to seek better living conditions elsewhere. However, irregular immigration is also mainly the result of such push factors occurring in combination with the use of restrictive immigration measures by the states where these migrants see prospects for a better life.

Starting in the mid-1970s, Western governments have severely restricted immigration into their territories previously possible through work permits and asylum applications. For example, treaties such as the Schengen agreement and polices like the third country rule, coupled with ever stricter policing of borders, have made it harder and harder to gain asylum in EU states (Krause, 2008: 331-48). Moreover, the diminishing desire of European States to accept any more migrants looking for work has limited the 'legal' opportunities to escape from the kind of socio-economic problems described above (i.e. the push factors) in migrants' countries of origin. Nevertheless, according to Krause, these restrictive immigration measures in European states have failed to prevent immigration. They have instead "illegalized work migration and driven many potential asylum-seekers underground" (2008: 331).

Scholars argue that, in a globalizing world, the "neo-liberal offensive", as Overbeek (2002: 3) terms it, of deregulation, liberalization, and flexibilisation increases the demand in the industrialized world for unskilled and semi-skilled labour in precarious working conditions. He argues that, in these circumstances, undocumented immigration becomes a vital tool for employers, because "[t]he employment of undocumented foreign labour has ... in many cases become a condition for the continued existence of small and medium size firms" (Overbeek, 2002: 3). Overbeek also claims that, when this market flexibilisation and deregulation is combined with restrictive immigration policies, it leads to an increase in illegal immigration (2002: 6).

Similarly, Haidinger (2007: 10) argues that it is the flexibility that undocumented migrants display, and which citizen workers lack in the labour market, that makes the former attractive to employers. He too sees the deregulated economy as attracting undocumented immigrants into the labour market, and claims that this happens not only in large globalized cities but also in the rural peripheries, where the agricultural sector depends on the labour of irregular workers.

In conclusion, in very general terms, it can be argued that irregular immigration has emerged as a result of a three-way combination of the push factors operating in migrants' countries of origin, the restrictive immigration policies of the receiving countries, and the high level of demand for irregular migrant work in the economies of the receiving countries.

2.1.2. Two Different Approaches on Irregular Migration

In this section, my objective is to discuss two rather opposing approaches on irregular immigration. The first, which could be termed the official approach, emphasizes legality, and is usually used by states, though sometimes also by (inter)national governmental institutions. The second, rights-based, approach on irregular migration differs substantially from the official approach. The discourse of civil society organizations is a good example of this.

2.1.2. 1. The Official Approach

According to Russell King (2002: 89-106), a number of heuristic divides or binaries of migration have emerged, such as voluntary versus forced migration, or internal versus international migration. For King, although these binaries may help beginners in the field of migration studies to construct a mental map of the field, in the late 20th and early 21st centuries, they are no longer effective distinctions for understanding migration. He identifies five such binaries[6], including the legal versus illegal migration dichotomy. King points out that, the dichotomy between illegal and legal migration "fails to match many aspects of contemporary migration reality" (2002: 93). He highlights opposing views which consider 'illegal migration' as requiring to be combated, or a consequence of 'natural forces' of migration, hence a process to be appropriately managed. Moreover, he draws our attention to the fact that "the boundary between legality and illegality is easily crossed" (King, 2002: 93). As an illustration, a regularization law could turn an illegal status into one of legality, or a person who legally resides in a receiving country could acquire an illegal

[6] These binaries are: process vs. product (i.e. studying either the migratory movement or the migrating group); internal vs. international migration; voluntary vs. forced migration; temporary vs. permanent migration; legal vs. illegal migration

migrant status if he or she works without a work permit. Therefore, the use of the term 'illegal' does not allow one to capture the real nature of developments in this area and hinders the identification of what this process may entail. Although this is the case, still in many contexts the term 'illegal migration' is often used with the binary between illegal and legal migration being carefully preserved. Unsurprisingly, official approach is one such context where the use of this binary is strictly observed. Even when the state's discourse uses the term 'irregular' (or others) instead of 'illegal' the use of the term 'legal migration' connotes its antonym. In state discourse, the term 'illegal' is preferred, basically because the presence of migrants within the receiving state against the will of the latter challenges the sovereign rights of the state to decide who can reside and/or work within its territories. Thus, by using the term 'illegal migration' instead of 'irregular' or 'undocumented' migration, states find a way to attribute a criminal character to these people, implying that they break the laws that regulate migration and related procedures.

The EU's official approach dealing with irregular immigration is no exception in that sense; it also maintains an 'illegal' approach on such issues, and in documents covering irregular migration. It also provides a specific definition of 'illegal migration' that has similarities with the definitions referred to in the first part of this chapter. The EU definition reads:

> The term 'illegal immigration' is used to describe a variety of phenomena. This includes third-country nationals who enter the territory of a Member State illegally by land, sea and air, including airport transit zones. This is often done by using false or forged documents, or with the help of organised criminal networks of smugglers and traffickers. In addition, there is a considerable number of persons who enter legally with a valid visa or under a visa-free

> regime, but "overstay" or change the purpose of stay without the approval of the authorities; lastly there are unsuccessful asylum seekers who do not leave after a final negative decision. (EU, Communication from the Commission, 2006: Article 3)

As another illustration of the 'illegal' approach, the section on the official EU Justice and Home Affairs website that summarizes the policies adopted towards irregular migration is listed under the heading "Wide-ranging common actions to *combat illegal* [author's italics] immigration at EU level and promote return of illegal immigrants" (EU Home Affairs, n.d.). This heading signifies that the EU approach involves measures taken against a group of criminal (as they are "illegal") migrants during a war (since there is "combat") that is being fought against them.

The website also states that "Solidarity, mutual trust and shared responsibility between Member States is a key requirement in an area without internal borders, which poses a particular burden with respect to pressure from illegal immigration on Member States who control an external border" (EU, Communication from the Commission, 2006: Article 7). Thus, having criminalized immigrants, and put it at war with itself, the EU also links irregular migration with security of its borders – one of the most prioritized and 'sacred' possessions of a state.

The manner in which this approach characterizes various actions as a "fight", "combat", and "illegal" can be criticized using the point made by King (2002), that the division between *legal* versus *illegal* migration fails to capture the reality behind the emergence and continuation of the concept and the attending processes.

EU approach also contributes to the precarious position of irregular migrants in the EU, since "[m]igrants themselves are criminalized, most dramatically through

widespread characterization of irregular migrants as "illegals", implicitly placing them outside the scope and protection of the rule of law" (Taran, 2000: 11).

It can be argued that irregular migration or irregular migrants have become the objects of the process of the "securitisation of certain persons and practices as 'threats'" (Guild et al., 2008: 2) that has been going on in the EU context. "The 'undesired' form of human mobility often called 'irregular immigration' is being subsumed into a European legal setting that treats it as a crime and a risk against which administrative practices of surveillance, detention, control and penalisation are necessary and legitimised" (Guild et al., 2008: 2). As stated earlier, EU measures have also linked irregular movements with border security. Irregular migration has been considered as one such threat, against which the security of the borders of the EU must be preserved. Thus, one other important objective of EU border management is to effectively "fight" against or "combat" all the "illegal" attempts to cross the borders of the EU. The selective use of such expressions as "fight against", "combat" and "illegal" could be considered as a discursive strategy place irregular immigration within the context of security, and to create a category of human activity and a group of people who threaten the security of the state (Guild et al., 2008: 3).

Similarly to the above argument, Samers argues that the threat of 'illegal' immigration in the EU is in a way created by the discourse and actions of EU officials themselves (2004: 27-45). Samers observes that irregular migration, or in the EU's discourse "illegal migration", grows through official words and deeds. "If illegal migration is produced by stricter regulations, then the state is not so much controlling it, the popular press not so much reporting it, as they are both creating it

… through popular and governmental arguments such as ‘we need to reduce the number of bogus asylum-seekers” (2004: 29).

This securitization discourse seems to have had great success in encouraging common EU decisions concerning immigration as aimed at in the Amsterdam treaty, in contrast to any other field (Samers, 2004: 31). One could question why this is the case. The answers could be multiple and diverse, but in relation to the above discussion on EU discourse on irregular migration, it could be argued that, since a dominant approach in the official context could emerge, the definition of the policy problem turns out to be simple and clearly focused on security and combating irregular migration, which in turn suggests an unambiguous and patent solution. In other words, if the EU’s problem is ‘illegal’ immigration, then the solution is to “fight” against or “combat” it, and such a process is to be implemented by the relatively smooth process of formulating common measures at the EU level for this clearly defined problem and its solutions.

2.1.2. 2. The Rights-based Approach

The previous section discussed mainly the official state approach on irregular immigration by using the EU as an example to show how the emphasis on being ‘illegal’ is used to highlight the significance of state sovereignty over its territory. It was argued that by criminalizing and punishing the irregular migrant the state can reinforce the sovereignty of itself and its citizens (McNevin, 2007: 655-74). This occurs because, through its discussions over irregular immigrants, a state reinforced its power to decide who can and cannot be one of its members, and whose presence

in the state is not to be tolerated. Thus, the choice of the attribute 'illegal' serves the purposes of states. Moreover, "…as long as irregular migrants lack formal recognition they remain constitutive outsiders whose imminent but 'other' identity helps to establish the meaning of the state's 'inside' and 'self'" (McNevin, 2007: 669). And for that reason, it can be argued that the territorial aims of states are better served by maintaining the irregularity of migrants rather than having regularizations and "legalizing" their status. However, there is another side to this issue concerning the threat to the fundamental human rights of irregular immigrants. Haidinger notes this problem in the following way:

> Undocumented migrants suffer discrimination in regard to their human rights, including: the right to adequate housing; the right to health care; the right to education and training; the right to family life; the right to minimum subsistence; the right not to be arbitrarily arrested; rights during detention or imprisonment; the right of equality with nationals before the courts; the right to due process; the prohibition of collective expulsion; and the right to fair working conditions, embodied by the right to a minimum wage, the right to compensation in cases of workplace accidents, injury or death, the right to equality before the law (e.g. in employment-related cases), and the right to organize. (2007: 24)

This means there is a competing approach to the 'illegal' approach that can be termed the 'rights-based' approach. The rights based approach exposes the limits of the official approach and how it may be detrimental to the protection of the basic human rights of irregular migrants. It claims that the 'illegal' approach leads to a failure of the overall understanding of irregular migration to recognize that such individuals should also have access to their basic human rights. Instead, the state draws borders around a group of people, deeming their status as illegal, and represents them in such a way that the protection of their rights becomes considered

as irrelevant, since they broke the law(s) on entry, exit and/or stay, hence committing criminal act(s) by violating the state's rules regarding the management of its borders. In practice, the most vocal and multifaceted arguments in favour of the rights-based approach to irregular immigration is usually presented by civil society. In order to illustrate this approach I therefore refer to some of the statements of the Platform for International Cooperation on Undocumented Migrants (PICUM) in the rest of this section.[7]

The website of PICUM states that the aim of the organization is "to promote respect for the basic social rights (such as the right to health care, the right to shelter, the right to education and training, the right to a minimum subsistence, the right to family life, the right to moral and physical integrity, the right to legal aid, the right to organize and the right to fair labour conditions) of undocumented migrants" (PICUM, Mission, n.d.: para.2). Clearly, this organization aims to situate discussions on irregular migration within a fundamental rights framework. One of the methods of the organization in promoting the rights of irregular migrants is stated as "[f]ormulating recommendations for improving the legal and social position of these immigrants, in accordance with the national constitutions and international treaties. These recommendations are to be presented to the relevant authorities, to other organizations and to the public at large" (PICUM, n.d.). That is, the organization seeks to create greater awareness, both on the part of governments and civil society.[8]

[7] The academic literature exhibiting a rights-based discourse is reviewed in the second part of this chapter, under the section that reviews studies of the life situations of irregular migrants.

[8] Some of the names of the publications of PICUM are as the following: Access to Health Care for Undocumented Migrants, PICUM's Concerns about the Fundamental Rights of Undocumented Migrants, Undocumented Migrants Have Rights! An Overview of the International Human Rights Framework, Ten Ways to Protect Undocumented Migrant Workers, Health Care for Undocumented Migrants (PICUM, Publications, n.d.). For example, the publication, Undocumented Migrants Have Rights! An Overview of the International Human Rights Framework, demonstrates that the human rights of irregular migrants are

To conclude, the rights-based approach differs significantly from the 'illegal' discourse. The former sees the irregular migrant as someone whose rights need to be respected and protected, while the latter criminalizes the process and the individual from a sovereignty and security oriented perspective. In other words, "the social category of "undocumented/illegal immigrant" is often associated unnecessarily with other forms of criminal activities and frequently carries with it racial assumptions" (Samers, 2001: 132). Such an attitude and policy direction further challenges the irregular migrant and his/her rights within states, while almost completely excluding the macro-level structural reasons behind irregular migration and the accompanying micro-level human suffering.

2.1.3. Concluding Remarks

The main aim in this part of the chapter was to provide a broader understanding of irregular immigration. In order to do that I first discussed some conceptualizations of the term and the causes of irregular migration, as addressed in the literature. I then elaborated on the two competing approaches that have emerged regarding irregular migration. In the rest of the chapter, I review the literature on irregular immigration with the aim of locating the main concerns of this study within the existing literature.

2.2. The State of the Art on Irregular Migration

The main research question of this study is: "What is the role of democratic accountability mechanisms (i.e. civil society activism and judicial review) in the

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in fact being granted in the relevant human rights treaties and in the Universal Declaration of Human Rights.

protection of the rights of irregular immigrants who are already living within the receiving country?" The goal of this chapter is to integrate this research question into the existing literature on irregular migration in order to show how answering this research question can contribute to understanding irregular immigration. Throughout this chapter I therefore classify and analyze some of the most important studies on irregular migration in order to draw a picture of the state of the art on the topic and present the gap that is filled by my research. In the final section of the chapter, I discuss the possible contributions that can be made to the literature from responding to the central question of this research.

Haidinger (2007: 4), in a literature review report on undocumented migrants and the informal economy, classifies the thematic focus of European research on irregular migration into three topics. One group of studies deals with the life situations of irregular migrants, such as their healthcare situations, working conditions and residential circumstances. The second group of studies is concerned with the control policies formulated towards irregular immigrants. This research mainly focuses on issues like border controls, border management and inter-state control. The final category of research focuses on the relationship between irregular migration and labour market structures, and the integration of irregular migrants into labour markets.[9]

Although Haidinger only reviews European research on irregular migration, I would argue that his classification can also be applied to the literature in general, even if it is not specific to the European continent. For that reason, I adopt his classification as the basis of this review, although I also make certain modifications

[9] In comparison with the first two groups, less research has been conducted for this final category.

and additions. More specifically, I add one more thematic group to his classification, in which I place those studies which focus on the general characteristics of irregular migratory flows and the people involved. That is, this category involves studies analyzing who migrates, through which migratory routes, and how, i.e. by using what kind of means. Additionally, I broadened Haidinger's third category to include studies that focus on the political economy of irregular migration. Therefore, taking Haidinger's classification as the basis of this review, I classify the existing literature along the following thematic lines: (1) studies which focus on the general characteristics of irregular migratory flows and the people involved; (2) research that analyzes the political economy of irregular migration; (3) studies which work on the control mechanisms/policies of states towards irregular migration; and (4) studies that focus on the life situations of irregular migrants within the receiving states.

In passing, one should note that this classification is as artificial as the other classifications of any literature in general, since any one study may well have intersecting thematic foci, as indeed is the case. Nevertheless, I believe that this classification is useful in providing a broader understanding of the state of the art regarding irregular migration, as well as providing the broadest possible analytical framework in which to locate the main concern of my research.

2.2.1. The General Characteristics of Irregular Migratory Flows

Among the studies on irregular migration there is a body of work that focuses on the very nature of irregular migration, showing who migrates, through which migratory routes, and how, i.e. by using what kind of means. These studies provide

data on the characteristics of irregular migratory flows, and on the migrants who are involved in irregular immigration. It is important to mention this work since it sheds light on the general dynamics of irregular migration in the global international migration framework, the understanding of which will allow me to present my research question. Additionally, I try to focus on studies that concentrate more on Europe, and especially on those that focus on Southern Europe, since the focus of the present research is on the Mediterranean countries of Greece, Spain and Turkey.

İçduygu (2007B) provides a thorough overview of irregular migratory flows in the Mediterranean countries of France, Greece, Italy, Portugal, and Spain, demonstrating that irregular migration constitutes one of the main forms of migratory movements in the Mediterranean area. The study provides data on the estimated number of irregular immigrants in each country, and from where the flows mostly originate. For example, southern European countries receive migrants from diverse countries to the east of the Mediterranean basin, such as Turkey, or from Asia, such as Pakistan, or from Africa, such as Congo. The study also reveals evidence on how these irregular movements operate across the Mediterranean basin, on whether they constitute illegal entry or overstayed visas, and also on the nature of regularization programs introduced in receiving countries for irregular immigrants. The review highlights the increasing volume of irregular migratory flows, which it attributes to the situation produced as a result of the dilemma between the restrictionist immigration rhetoric and policies of the states, and "a liberal frame of economic rationality" that attracts and absorbs irregular migratory flows (İçduygu, 2007B: 142).

Among the studies within this group, there is also a large body of case studies investigating the nature of irregular migration within single countries. For example, focusing on Turkey as a transit and receiving country, İçduygu (2003) finds that three main trends characterize the nature of irregular immigration to Turkey. First, there are job-seeking migrants from Eastern Europe, such as Moldovan immigrant women who work as domestic workers taking care of middle and upper class families' children or elderly. The second trend concerning irregular migration flows to Turkey involves transit migrants from Middle Eastern countries such as Iran and Iraq, or from Asian countries such as Pakistan, Sri Lanka and Bangladesh, or from African countries such as Congo, Nigeria, and Somalia. The third form of irregular migration flows is the rejected asylum seekers, who do not return home but instead look for illegal work, and/or ways to move to another country (İçduygu, 2003: 17-8).

Studies examining irregular migration in the context of human trafficking and smuggling can be included in this group too as they concentrate on a specific kind of irregular migration - the one that happens through human smuggling or trafficking. One such study demonstrates that migrants who entered Europe through the help of smugglers had no alternative ways of legally travelling to Europe (van Liempt, 2007). This study also demonstrates that, even if the migrants had had valid documents to enter Europe, they might not have had legal permission to leave their state of origin; under these circumstances too, smugglers are consulted to enable immigration to European states. Irregular migrants pay large amounts of money to the smugglers for this service. The findings suggest that it is the smugglers who decide most of the time on the final destination of the journey meaning that, even though migrants pay large sums of money for their route, they may end up in

countries not of their preference, so they may need to pay other smugglers to continue their journey to their desired destinations. Concerning irregular migratory flows into European states, the study shows that the use of smugglers is increasing, which could be considered to be the consequence of restrictive immigration policies.

Salt (2000) claims that it is impossible to find a precise definition of trafficking and smuggling in the literature. However, he also notes that there is now an acceptance of a kind of analytical divide between trafficking and smuggling. In that sense, the goal of the former is to move people against their will to places where their labour can be exploited and their human rights abused. Smuggling, on the other hand, is facilitating illegal entry to a destination country. Even though Salt refers to this division between trafficking and smuggling, he also recognizes that, in reality, the two may be mixed; where trafficking can involve smuggling or smuggling can also involve serious human rights abuses by the smugglers.

He conducts an analysis of the characteristics of trafficked and smuggled migrants in terms of their nationality, demography, socio-economic conditions, and motivations, based on the studies of International Organization for Migration. He shows that the demographic characteristics, economic skills and education and motivation of trafficked and smuggled migrants vary according to their country of origin; and that in fact all these variables are interlinked. For example, trafficked women from Ukraine, Belarus and Russia are usually highly educated with university degrees (Salt, 2000: 47).

2.2.2. The Political Economy of Irregular Migration

The literature on irregular migration includes studies that may be classified as focusing on the political economy of irregular migration in general, and the relation between irregular migration and labour market structures in particular. It is important to refer to these studies in a literature review on irregular migration because, by focusing on the economics of irregular migration, these studies directly or indirectly refer to the causes behind the emergence of irregular migration, which provides a setting in which this study's research question becomes significant.[10]

The studies in this group focus on underlying factors such as globalization, neo-liberal policies and the global division of labour that have triggered the emergence of irregular migration (Likic-Brboric, 2007), the demand for irregular migrant work, and new relationships between the informal market and irregular migration in the economies of receiving countries (Toksöz, 2007; Samers, 2003).

Samers (2003) analyzes the political economy of undocumented migration in France in the 1990s, within the frameworks of Marxist and Liberal political-economic explanations of immigration control in general. He points out that, from a Marxist perspective, it could be argued that, as welfare rights have been extended to legal migrants almost at a similar level to that of the natives, undocumented migrants have become more attractive to employers, who seek to minimize their labour costs. That is, undocumented migration is inseparably associated with "capital accumulation and the nature and regulation of labour markets" (Samers, 2003: 575). In other words, he argues that undocumented migration affects the nature of labour markets and in turn capital accumulation, even if the empirical data shows that the

[10] I will elaborate more on this issue at the end of this section.

numbers of undocumented migrants are falling in the French labour market. Therefore, he argues that one should not expect immigration policy makers to disregard "the relationship between immigration and labour markets, because to do so would jeopardize the very foundations of capital accumulation, and thus the French capitalist state" (Samers, 2003: 575).

Like Samers, Jahn and Straubhaar (1998) also treat the economics of irregular migration and legal migration as similar. They argue that the logic that evaluates the economic impact of irregular migration is based on the "general economic impacts of the international movement of persons" (25). In other words, the economics of illegal migration in terms of its effects on the labour market is no different than the economics of legal migration. In order to determine the effects of irregular migration on the wages and employment of natives, the authors differentiate between whether the migrants' work complements or supplements the work of the natives. If the migrant labour supplements the native workforce, then, as the supply of labour will be abundant, wages will fall. However, if migrant labour complements the native workforce, then one could expect to see the native labour force reach a higher productivity level and become better off (Jahn and Straubhaar, 1998: 26).

One such study looking at the economic impacts of irregular migration analyzes the effects of irregular migration on workers, employers and consumers, on the welfare system in general, and also on structural adjustment and productivity growth (Ghosh, 2000). Ghosh argues (as Jahn and Straubhaar do) that, in order to determine the effect of irregular migrants on wages in the receiving country, one should look at whether or not irregular migrants complement or compete with the

nationals and/or legal migrants in the receiving country. If irregular migrants only take jobs for which there is a labor shortage then there is not much effect on wages. However, when irregular migrants compete with nationals and legal migrants for scarce jobs, then they cause wages and other benefits to decrease. In this case, irregular migrants offer large financial incentives for employers, who find legal employment more of a financial burden. Ghosh refers to a situation in the Netherlands where employers who were convicted of hiring irregular migrants had made large financial gains, even after paying their fines (2000: 143). In terms of the effects on the welfare system, Ghosh argues that it depends on the extent to which irregular migrants (and their families) use the welfare systems, and also to the extent of their contribution to the welfare system. However, he recognizes that measuring their cost and contribution to the welfare system is very hard in terms of providing accurate data. In terms of structural adjustment and productivity growth, he concludes that irregular migration is "contributing to the segmentation and dysfunctioning of the labour market. In addition it can inhibit restructuring and upgrading of the economy in the destination country" (Ghosh, 2000: 145). This happens because non-competitive firms prefer hiring irregular migrants in order to reduce their production costs instead of investing in productivity increasing technologies in order to increase their competitiveness. This situation can also create a vicious circle by increasing the demand for irregular migrants. "Since improved productivity is the basis of economic and wage growth, cheap foreign labour can be counter-productive in the long run" (Ghosh, 2000: 157).

The studies cited above exemplify how the general economics of irregular migration are analytically considered in the literature. There are also studies that

consider the emergence of irregular migration from an economic perspective. Boswell and Straubhaar argue that the illegal employment of foreigners develops due to two major factors: (1) strict legislation on legal labour migration that makes it impossible to hire legal labour migrants in certain industries, such as agriculture, construction and cleaning; and (2) the demand of businesses for cheap labour, which they can satisfy by hiring irregular migrants because this will lower their production costs through "non-payment of social contributions, lower salaries, and hiring workers willing to work more flexible hours or with sub-standard working conditions" (Boswell and Straubhaar, 2004: 4). Additionally, illegal employment of foreigners creates conflicting interests for the government. On the one hand, illegal employment is economically beneficial for employers by lowering their costs as outlined above. Thus, curbing the employment of foreigners would bring economic costs for governments in general. On the other hand, governments are also under serious pressure to manage the illegal employment of foreigners and flow of irregular migrants in order to meet other concerns, such as competition of illegal labour migrants with nationals for scarce jobs, exploitation of workers, pressures arising from negative public opinion towards illegal immigration, and pressures from organized interests such as migrant rights organizations, churches and trade unions. Boswell and Straubhaar argue that this situation creates "an ambivalent stance" on the part of the governments towards the issue of the illegal employment of foreigners: "While condemning it in public, they have shown a less than robust commitment to tackling it in practice" (2004: 5).

Looking at Southern European states (especially Italy and Greece), Toksöz (2007) argues that the existence of a strong informal economy is the essential factor

shaping the flow of irregular labour migrants in the Mediterranean region. Informal work is present mostly in sectors like textiles/clothing, repair workshops, transport, entertainment (in Italy), and also in agriculture, tourism, construction, domestic services, and small manufacturing firms (in Greece). The employment of irregular labour migrants is greatest in these sectors, where the share of informal work is higher. Irregular labour migrants are concentrated in agriculture, domestic work, peddling, construction, small manufacturers, hotels and restaurants, low status urban services, entertainment and prostitution. There is also gender-based segregation within these sectors. Migrant women mostly work in the sex industry, entertainment, and domestic work, whereas men work mostly in construction and agriculture. On the other hand, seasonal and temporary work in tourism and textiles provides employment for both male and female migrant workers. Toksöz (2007) finds that, in the Southern European countries, productivity is relatively poor in some sectors, such as agriculture and manufacturing. Therefore, in order to survive, businesses in these sectors rely on cheap and flexible labour, which can only be supplied by irregular labour migrants as most natives are uninterested in such low-paid jobs even if they are unemployed.

From another perspective, Ahmad (2008) looks at the socio-economic consequences of being a smuggled migrant, particularly those from Pakistan and Afghanistan, in the labour market of the receiving country. The study compares and contrasts these migrants' socio-economic conditions in London with other migrants, irrespective of nationality, as well as with some natives. This leads Ahmad to question common generalizations about the socio-economic conditions of 'illegal'

labour, such as being the same as “semi-slavery”.

Scholars such as Ahmad also point out a conceptual differentiation between work and job. The latter signifies “regular hours of guaranteed employment and rates of pay” (Ahmad, 2008: 864), whereas work stands for labour that is being provided with unregulated and irregular terms and conditions with a “take-it-or-leave-it basis at a given moment” (Ahmad, 2008: 865). His argument is that low pay is not determined by the legal status, i.e. of being a smuggled migrant or not. Rather, wage levels are determined by whether the migrant is doing work or has acquired a job.

To sum up, studies in this group suggest that there are substantial similarities between the economic impacts for receiving countries of irregular migrants and others who move across international borders. However, the economic consequences of these movements are not mutually exclusive. Whether irregular migrants compete for or complement the jobs of the regular migrants, they impact the wage levels of regular migrants and the native population one way or the other. These studies also demonstrate that receiving states have a certain capacity to absorb incoming irregular migrants, either in jobs or works, and the existing informal economies coupled with the demands of employers for cheap and flexible labour can function as the pull factors of irregular migration. However, irregular immigrants working in the informal economy most of the time lack any labour safety protection or any other economic protection because of their labour’s ‘illegal’ status. In this context, searching for answers to the question, to what extent states protect the rights of irregular immigrants becomes especially important in order to find out if there are any formal mechanisms to prevent this exploitation of irregular immigrant labour.

2.2.3. Policies Controlling Irregular Migration

The starting point for the studies in this group is the problematic relationship between irregular immigrants and the receiving state. Despite substantive improvements in the facilitation of the free movement of capital, goods and services, there are still major limits to the free movement of people, with nation states still reserving the sole authority and sovereign right to decide who can enter and reside within their territories. The fact that there are people, such as irregular migrants, who happen to remain there against the state's will presents a sovereignty crisis. Hence states develop certain policies and measures to control these irregular migratory flows, which have been extensively studied in the literature on irregular migration. Those studies show that the 'war' against irregular immigrants may be fought both on the border and also within the territory. Thus, while some studies in this group focus on border management, others discuss developments within the territory of the states.

I begin by referring to one study (Broeders, 2007) which focuses on three EU-wide large-scale electronic surveillance systems: the Schengen Information System (SIS) and its complementary systems, SISII and SIRENE; and the European Dactylographic System (EURODAC) and the Visa Information System (VIS). SIS, SISII and SIRENE are large data systems containing personal information on five different categories of people in Europe. Irregular migrants are categorised under the title "persons to be refused entry to the Schengen area as unwanted aliens" (Broeders, 2007: 79). Broeders reports that "[i]nformation on persons that may be

stored in the SIS consists of a rather basic and limited set of information: first and last name, known aliases, first letter of the second name, date and place of birth, distinctive physical features, sex and nationality, whether persons are considered to be armed and/or dangerous, reason for the report and action to be taken" (2007: 79). EURODAC on the other hand, is aimed mainly to prevent 'asylum-shopping', i.e. applying for asylum in more than one country at the same time. The system stores the fingerprints of both asylum claimants and irregular migrants. The goal of VIS, meanwhile, is to identify irregular migrants who enter with a legal visa but somehow end up becoming irregular migrants within the host country.

Broeders notes that these computerized information systems can also be used for goals that are unrelated to the original reason for their construction, allowing "function creep" to emerge because of political considerations. As he puts it, "the panoptic focus on territory has shifted to a focus on population, and in the case of surveillance on (irregular) migrants, it has shifted to an internationally mobile population." (Broeders, 2007: 89).

Another study, by Broeders and Engbersen (2007), focuses on the internal control policies of states to exclude and discourage those irregular migrants who have somehow managed to pass through the border. The authors first discuss why irregular migration is a 'threat' for the state, arguing that "[a]fter family and asylum migration, it is now irregular migration that is casting doubts on the liberal state's capacity to refuse and deter unwanted immigration." (Broeders and Engbersen, 2007: 1592). Thus, the main implication of increasing flows of irregular migration is the impression that the state is losing control over immigration. When the number of

migrants defined as 'illegal' according to immigration laws increases within the territory of a state, they, as irregular migrants, "become a direct challenge to the state's notions on legal mobility and territoriality in a globalized world" (Broeders and Engbersen, 2007: 1594). Therefore, gathering information on, and identification of, the migrant population of the state becomes vital in order to identify and exclude those who are there against the will of the state. For that reason, states have designed varied surveillance strategies to identify and exclude irregular migrants from key institutions of the society. In this context, the authors elaborate on three central strategies of states for excluding irregular migrants. First, states block their access to the stable and tax-paying labour market by sanctioning employers, requiring diverse documents, and organizing regular inspections of labour market through computerized checks on identities and other documents. Second, the state can use incarceration and expulsion to exclude irregular migrants. When caught, irregular migrants are 'housed' in closed centres, under conditions similar to a prison regime. These deportation centres are designed for the efficient organization of forced returns. The third strategy is digitalization of borders, i.e. documenting data on irregular migrants through systems such as VIS and SIS, SISII, discussed earlier.

Various studies have focused on the Europeanization of border control policies and the impact of the EU on the control of the flows of irregular migrants. Samers (2004), for example, provides a thorough description and analysis of European policy developments with respect to irregular immigration since the Treaty of Amsterdam.[11] The central thesis in Samers' work is his claim that the threat of 'illegal' immigration in the EU has, in a way, been created by the discourse and

[11] A description of EU policies on irregular migration will be provided separately in greater detail in other chapters of this study. Here, I focus just on Samer's analysis of the EU's irregular migration policies.

actions of EU officials themselves (2004: 27-45). In order to explain this EU creation, Samers adopts the term 'virtualism' from economic anthropology, which denotes basically the creation of economic reality by economic models rather than the other way round. Using this term as a means to understand the geopolitics of irregular migration, he observes that irregular migration, or according to the EU's discourse 'illegal migration', has grown through official statements and deeds. For example, visa policy, according to Samers, is one such policy area where one can observe the emergence and effects of virtualism. He explains the reason for this using the EU Commission's own statement: "Illegal immigration represents one of the basic criteria for the determination of those third countries whose nationals are subject to the visa requirement" (Samers, 2004: 32). Samers argues that the selective application of restrictive visa policies to particular countries, decided on the basis of a risk analysis based on the socio-economic characteristics of these countries and the resulting likelihood of mass migration from them, actually *creates* visas overstaying, and consequently a market for smuggling and trafficking (2004: 32). This situation, in turn, encourages the state to impose further restrictions on granting visas for the citizens of other specified countries, which creates a vicious circle. Based on this analysis, Samers states: "If illegal migration is produced by stricter regulations, then the state is not so much controlling it, the popular press not so much reporting it, as they are both creating it … through popular and governmental arguments such as 'we need to reduce the number of bogus asylum-seekers'" (2004: 29).

From another point of view of the literature on control policies, Spijkerboer's (2007) study evaluates their consequences and efficiency. The study questions whether or not the sea border controls of European states have succeeded in securing

the borders from the 'invasion' of irregular migrants, and tries to discover the repercussions of these border controls for migrants' physical well-being.

As Spijkerboer (2007) reports, European countries compel the authorities in migrants' countries of origin to control irregular migratory flows from them and to take back apprehended irregulars of their nationality. This pressure to conform to the demands coming from Europeans, has led to various human rights violations at these points of departure, such as dumping people who try to cross borders illegally in isolated areas without food or water. At the same time, stricter border controls at these points of departure, such as Morocco, force migrants to use other far more roundabout routes to the European mainland, for example via Libya, Tunisia, Mauritania and Senegal. The available data does not support the assumption of European authorities that intensified border controls decrease the volume of irregular migratory flows. On the contrary, migrants do keep coming to the European mainland, but this time over longer and more dangerous routes.

It is also important to note that the European states' intensified border controls also disregard the physical well-being of irregular migrants. Although states refer to human rights while introducing border control policy proposals, in practical terms, and in the policy outlines, they do not address how to protect migrants from the risks that they could face as a result of border controls (Spijkerboer, 2007: 132). For example, it has been stated that Spanish boats for border patrol possess the equipment to intercept migrants, but not to rescue them from drowning or other threat to their physical well-being (Spijkerboer, 2007).

Overall, Spijkerboer's study clearly demonstrates that, since irregular migrants

do not abandon their plans to migrate despite enhanced border controls, but simply choose more dangerous routes, and since European states focus solely on border security and surveillance, and disregard the protection of migrant lives at borders, intensified border controls have led to growing number of human casualties at the borders (2007: 136).

A very similar observation and analysis of control policies is made in the US context by Cornelius (2005). As with the European context, in the US too new strategies are being developed, such as a computerized database with the photos, fingerprints, and other personal information of migrants, called IDENT, the establishment of video surveillance systems at US borders, and the building of a "10-foot high steel fence" in order to prevent entry from San Diego and El Paso (Cornelius, 2005).

By considering these post 1993 investments in border control strategies, Cornelius argues that the growth of irregular migration ('unauthorized' migration in his terms) has occurred at a time when the government of the United States is spending more on the control of its borders. The "concentrated border enforcement strategy" of the US aims to control the most popular borders[12] for illegal entrants from Mexico, with policy makers assuming that "geography [will] do the rest". That is, the policy relies on irregular migrants unwilling to risk their lives by entering through dangerous routes, such as the desert (Cornelius, 2005). However, as in the case of illegal European border crossings, in the US too, irregular migrants have started arriving via hazardous areas, so one indirect consequence of the new border policy has been to redistribute illegal entries more widely along the United States'

[12] These are El Paso, Texas, San Diego, central Arizona.

borders. Two other consequences of the border policy are an increase in the physical risks of border crossings, and an increase in entrants having to seek assistance from human smugglers.

Both Spijkerboer's and Cornelius' study demonstrates that these inefficiencies and human costs of border management arise because of the narrow approach adopted towards the management of irregular migratory flows. Both authors argue that irregular migrants will keep coming unless the social, economic and political conditions are improved in the countries of origin, and/or the demand for irregular migrant labour is curtailed in the destination countries.

Studies analyzing policies adopted towards irregular immigration mainly concentrate on control strategies, which aim to stop the flow of irregular migrants and also identify and decrease the number of irregular migrants already within the territories of the receiving states. However, there is a gap in the literature in focusing on other kinds of policies adopted towards irregular immigrants. The literature has failed to ask whether or not receiving states develop policies of any other kind than control, exclusion, identification, and deportation. More specifically, they have not questioned or analyzed theoretically whether or not receiving states enact any policies to protect the fundamental human rights of irregular migrants within their territories.[13] This study will fill this gap in the literature, by investigating the policies whose function is to protect the fundamental rights of irregular migrants in the receiving states. The intention is that this analysis will help to bring about a shift in the focus of policy analysis concerning irregular migration in general.

[13] There is some research done by civil society organizations, such as PICUM (Platform for International Cooperation on Undocumented Migrants) , and FRA (The European Union Fundamental Rights Agency) that looks at the rights provided to irregular migrants within the territories of receiving states. However, these are not theoretical studies of policy analysis.

2.2.4. The Life Situations of Irregular Migrants

The studies to be considered in this section reflect on the different dimensions of the life situations of irregular immigrants in receiving countries. Some concentrate on immigrants' conditions in terms of their access to fundamental human rights; others focus on the ways in which they accommodate and cope with their irregular migrant status; others reconsider general understandings of citizenship, state sovereignty and related terms based on the life situations of irregular migrants in receiving states.

Taran (2000) argues that the application of human rights norms to non-citizens, and especially to irregular migrants, is inadequate and imperfect. In his study, Taran highlights the problem that irregular migrants remain "at the margin of protection by labour workplace safety, health, minimum wage and other standards; they often are employed in sectors where such standards are non-existent, non-applicable or simply not respected or enforced" (2000: 14). He argues further that the choice of the term 'illegal' in official state approach to name these people further worsens their situation because, through this characterization, they are criminalized and implicitly placed "outside the scope and protection of the rule of law" (2000: 11).

In another study, Krause uses the perspective provided by Hannah Arendt's work, such as *The Origins of Totalitarianism* to argue that undocumented migrants (or the "stateless") lack "the right to have rights" and for that reason they are subject to total domination in the receiving state. She argues that "[t]he fate of the stateless, when they appear in great numbers, calls attention to the fact that, for all practical

matters, the rights of man are still identified with the rights of citizen" (Krause, 2008: 339). She goes on to point out that stateless or undocumented migrants attracts attention to the anti-democratic nature of the existing nation-state system, in which it is the state which constitutes the citizenry rather than people constituting the state (Krause, 2008: 338). In other words, the living conditions of irregular migrants in receiving states demonstrates that, in today's world, a person only has his basic human rights protected if he is a citizen of a particular country; otherwise, he doesn't have the "right to have rights". We can thus consider Krause's work as a critical analysis of discourse and thought positions undocumented migrants as 'illegal' in the context of crime and criminality.

Another work that deals with the life situation of irregular migrants studies their irregular presence in the receiving state in relation to the idea of citizenship (Varsanyi, 2006: 229-49). She acknowledges that the line between citizens and non-citizens − irregular immigrants in this case − influences the meaning and practice of citizenship. Varsanyi supports an understanding of citizenship "in which full membership would not be dependent upon an explicit consent to enter and remain in a bounded community, as in the case with contemporary citizenship in the liberal democratic welfare state, but instead upon the mere reality of presence and residence in a place" (2006: 239). Based on that, she reports how irregular immigrants into the United States are being considered as "de facto residents" of sub-national communities, and how, in some states, a variety of rights, such as those of voting, avoiding deportation, having a legally accepted identity, and attending a higher education institution, are being coded into local and state laws (Varsanyi, 2006: 244). As she points out, this is a necessary step because those who remain 'illegal' in terms

of the discourse of the state are, "in many other ways, regular participants in the life of their communities" as neighbours, customers, workers, and parents to school children (Varsanyi, 2006: 240).

Focusing on a different dimension of irregular migrants' life situations, McNevin (2007) studies the mobilization of irregular immigrants for political belonging in the United States during March, April and May 2006, and discusses the implications of their demands for the practices of the "political", meaning "a radical questioning of what it means to belong" (2007: 656). The starting point for McNevin is Laclau and Mouffe's argument that "democratic struggle relates not only to the rights and opportunities afforded to defined groups (citizens, for example) but also to the contestation of boundaries through which those groups themselves are defined" (as cited in McNevin, 2007: 656).

She further argues that, when the state authorities punish and deter irregular immigrants, they reinforce the "territorial account of belonging", which underpins the sovereignty of the state and its citizens. Thus, irregular immigrants' claims for political rights challenge the territorial sovereignty and the definition of legitimate membership of the state.

Erdemir and Vasta (2007) study the 'irregular' dimension of Turkish immigrants to London over the last 20 years. All the migrants in their sample have experienced a certain form of irregularity. The main concerns of the study are how these people develop and manage specific work strategies that help them cope with a "deregularised" and "casualized" labour market, the problematic dichotomy between the regularity and irregularity of a migrant's status, and the role of solidarity among

migrant co-patriots in adapting to this irregularity.

The authors' analysis indicates that solidarity between an irregular migrant and his/her co-patriots may not always be to the full advantage of the migrant. Even though this solidarity helps solve some problems arising from irregularity, it can also exploit the migrant both morally and materially. From another perspective, in order to manage their irregularity in the labour market, migrants have to accept jobs requiring skills well below their qualifications. Thus, a certain level of deskilling occurs among irregular Turkish migrants in London. Another finding of the study is that migrants are able to move between statuses of regularity and irregularity. However, although "most Turkish immigrants manage to regularize their immigration status over the years [, a] parallel regularization ... is not observed concerning their labour market status" (Erdemir and Vasta, 2007: 311).

Another study, by Gibney (2000), compares the life situations of irregular migrants in three different countries, discovering very similar results. The study synthesizes three national country reports (for the UK, Germany, and Spain) prepared by the Jesuit Refugee Service in 1996. In all three reports, interviews were conducted with irregular immigrants themselves, and/or with contacts having direct knowledge and experience of both the life experiences of the irregular immigrants and the national authorities. Although different methodologies were adopted in each case, Gibney (2000) argues that the findings in each country report demonstrate striking similarities about the everyday life experiences of irregular migrants. Specifically, the life of irregular migrants is "a rightless existence without the basic protections of criminal and civil law and with no legal avenues by which to assert an

entitlement to just and humane treatment" (Gibney, 2000: n/a). Moreover, due to their rightlessness, irregular migrants remain deprived of a public stage to express their grievances, thereby remaining "locked into a position of social and political invisibility" (Gibney, 2000: n/a).

Another important contribution to research looking at the life situations of irregular migrants is Chavez's 1998 book *Shadowed Lives*. This study provides a case study of the living conditions of irregular Mexican immigrants in the United States, in San Diego County. Regarding the over-general and one-sided media coverage of undocumented migrants as "illegal aliens", the author says: "I sensed that there was a great deal more to the study. Who were these people? I wondered about their lives, their motivations, and their aspirations for the future… What was missing was a sense of their everyday reality and experiences" (Chavez, 1998: xi). The author thus intended that the book should fill this gap, and the study thoroughly describes and analyzes the life situations of the participants. In particular, it provides evidence about why these people chose to migrate, what their strategies were while crossing the border illegally, the housing conditions that they ended up with as irregular migrants, how they formed social networks through families and friends, and their fears and experiences of being an undocumented migrant. Chavez (1998) finds that these undocumented migrants have migrated mainly for economic reasons, and that they wish to find steady jobs. Many of them live rough in canyons and ravines, under bushes, others in makeshift housing. Finally, no matter how long they have been living in the US, most of them fear the possibility of apprehension and deportation each and every day.

As this review illustrates, the literature looking at the life situations of irregular migrants is valuable in acknowledging their uneasy and unprotected life situations in receiving states. These studies highlight that, although these people have not committed any crimes, they are identified as 'illegal' which means that they remain deprived of their social, economic and political rights. Hence, survival becomes their number one goal in the receiving countries. Therefore, studies looking at the life situations of irregular migrants are directly or indirectly highly critical of the 'illegal' state approach adopted towards these migrants. However, what is missing in this literature is an analysis of the state's position regarding their life situations. There is almost no analysis of what states 'think' about the life situations of irregular migrants within their territories, and a lack of research into whether or not policy-makers feel obliged to improve the life situations of irregular migrants. By analyzing the irregular immigration policy-making process, and identifying the conditions under which the rights of 'illegals' are protected, this study can help shed some light on these under-researched questions that have emerged in the literature on irregular migration.

2.2.5. Concluding Remarks: The Gap in the Literature and the Contribution

So far, I have reviewed the literature on irregular migration with the aim of situating my study within it, while also demonstrating how this study aims to contribute to the state of the art on irregular migration.

One important gap within the literature is that the four different lines of research discussed here currently seem to be explaining different aspects of the

question in an exclusive manner. Studies focusing on the very general characteristics of irregular migratory flows successfully show that there is this flow of people to certain regions from other parts of the world. For most of the time, these people enter the receiving countries without the formal permission of the latter, thereby ending up as 'illegals' in these countries. These studies, while useful, remain mainly descriptive, providing narratives and evidence on what goes on with respect to irregular migration. The literature on the political economy of irregular migration, meanwhile, shows that there are certain strong pull factors in receiving countries that attracts people from poorer regions of the world. They demonstrate that the economies of receiving countries can easily absorb those 'illegals' and that certain segments of their economies may actually gain from employing these people. States therefore face a dilemma: on the one hand, they need to respond to the infringement of their immigration laws; on the other hand, this 'illegal' labour can benefit certain, primarily capitalist, interests in their economies.

In contrast to this line of research, studies on immigration control policies ignore this legal-economic dilemma, instead describing state policies that seek to identify, capture and exclude 'illegals'. Such studies also appear to be blind regarding the existence of policies other than identification, detention and deportation. In other words, the literature focusing on the policy-analysis of states towards irregular migrants disregards policies concerning the rights of irregular migrants. While the final line of research, on the life situations of irregular migrants, usefully reports what rights irregular migrants have or have not been able to claim, it lacks a state perspective on the matter: of showing why and under what conditions states do protect the rights of irregular migrants. For this reason, the research

question of this study is deliberately located at the intersection of these two lines of research: studies on immigration control policies, and studies of immigrants' life situations. To put it in another way, the research lies at the intersection of the "illegal" versus "rights-based" approach on irregular migration; hence it can provide an account that combines both the state approach and descriptions of how migrants actually lead their lives. Therefore, by providing an answer to the question "What is the role of democratic accountability mechanisms (i.e. civil society activism and judicial review) in the protection of the rights of irregular immigrants who are already living within the receiving country?", this thesis aims to fill a gap in the literature on irregular migration that has been created because these two lines of research have proceeded almost independently of each other.

CHAPTER 3

THEORETICAL FRAMEWORK

3.1 Introduction: Research Questions and the Context

Research on comparative immigration policy has developed two distinct approaches (Freeman, 2007). The first approach focuses on cross-national variation in management of migration control and their political consequences. The second approach focuses on common problems that nation-states face and looks for evidence of convergence in the migration policies of different nation-states. "In practice, most serious studies involve some mixture of these two approaches, asking how diverse countries deal with common immigration problems" (Freeman, 2007: 27). The main aim of this study, which also takes an eclectic approach, is to scrutinize the relationship between democratic accountability mechanisms and protection of the rights of irregular immigrants. In doing this, it also aims to compare how three European countries, Greece, Spain and Turkey, deal with a common migration policy challenge: the treatment of irregular migrants within their borders. The existence of divergence and convergence is sought within the context of the three main questions:

1. Is there a divergence or convergence among Greece, Spain and Turkey in the way they treat irregular migrants in relation to the recognition of these migrants' fundamental human rights?

2. What is the role of democratic accountability mechanisms (civil society activism and judicial review) in the protection of the rights of those irregular immigrants who are already living in the receiving country?

and

3. To what extent do democratic accountability mechanisms at the national level (such as the activism of pro-migrant organizations, human rights groups, trade unions and other civil society organizations together with judicial review) impact on the treatment of irregular migrants?

Overall then, this research seeks to find out the variation or convergence among Greece, Spain and Turkey in their recognition of irregular migrants' fundamental social rights, specifically access to public health care systems and education, and while doing this it focuses on the integration of democratic accountability mechanisms to the politics of irregular immigration. This chapter aims to compare and contrast the existing literature on migration policy-making in order to identify the main arguments relating to the treatment of aliens in general and to the above-stated questions in particular.

3.2. Does International Human Rights Regime Explain the Treatment of Irregular Migrants?

Some studies focus on non-citizens' access to their rights as transnational actors through the legitimacy they receive from international human rights codes and norms. These studies highlight the power of international human rights regimes in fostering aliens' rights in a nation-state and by this way transforming the understanding of citizenship. As an illustration, in her classical work *Limits of Citizenship*, Soysal (1994) problematizes existing accounts of nation-state citizenship by asking: "Why have European states extended the rights and privileges of their

citizens to migrant workers?"(2). In her comparative study of Germany, France, the Netherlands, Sweden, Switzerland, and the United Kingdom, she concludes that granting of rights to migrant workers has been shaped by the "historically encoded membership systems" of the states concerned, and also by "global changes in the concept and organization of individual rights" (29). Soysal argues that European states differ in their incorporation regimes with varying organizational structures and policy discourses, which affects how migrants (as well as citizens) "become incorporated into its [society's] legal and organizational structures and participate in various activities of the polity" (30). However, what has actually made possible migrant workers' access to certain rights and privileges that were previously granted only to citizens is the new global human rights discourse that emerged in the Post-war period and led to "postnational membership" (Soysal, 1994). In the Post-World War II era, a universal approach on human rights emerged that has been formalized and coded within a multiplicity of international codes and regimes which influence a state's behaviour, not only towards its citizens but also towards non-citizens. "By setting norms, framing discourses, and engineering legal categories and legitimate models, they [international human rights regime] enjoin obligations on nation-states to take action" (Soysal, 1994: 149).

Similar to Soysal, David Jacobson (1997) also emphasizes the role played by international human rights norms in transforming understandings of the nation-state and citizenship in that these norms make membership of a nation-state irrelevant for enjoying rights. He argues that by paying more attention to international laws and norms, now national courts rule over the "[p]rinciples of national self determination, national interest, the scope of a court's jurisdiction, and sovereignty" (106) and make

all these secondary to international human rights norms. As a result, the state turns into "a forum where transnational laws and norms are administered, mediated and enforced" (Jacobson, 1997: 106).

The arguments put forward by Soysal (1994) and Jacobson (1997), as well as by 'globalists' like (Joppke, 1998), clearly show that, as post-national structures, international human rights regimes have a certain influence in creating a global acknowledgement of and adherence to the individual's rights as 'human' rights instead of 'citizen' rights; they also have the potential to oblige migrant receiving states to recognize the fundamental rights of aliens within their borders.

When one looks at various international human rights treaties, one can argue that the rights of irregular migrants are protected by almost all of the documents, as their main concern is the rights of man, rather than the rights of a citizen specifically. For example, the Platform for International Cooperation on Undocumented Migrants (PICUM) published an article which reviews the core human rights treaties that apply to undocumented migrants. The article clearly shows that rights to physical and mental integrity, health care, an adequate standard of living, fair labour conditions, education and equality before the law are granted and protected by certain articles of core international human rights treaties, such as the Universal Declaration of Human Rights (1948), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Covenant on Economic and Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), the Convention on the Rights of the Child (1989), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Convention

Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), and the UN Declaration on Individuals Who Are not Nationals of the Country in Which They Live (1985) (Biocchi and LeVoy, 2007). Of particular significance is the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990), as it is the most relevant international human rights treaty protecting the rights of irregular migrants.

Therefore, 'globalists' such as Soysal and Jacobson have a point when they argue that international human rights norms protect the rights of non-citizens and make nation-states protect the rights of not only their citizens but also aliens within their borders. However, when considered in terms of their capacity to protect the rights of 'illegal' migrants *per se*, this argument needs more elaboration - especially in order to clarify whether it can form part of the explanation in this research as to what factors improve the liberalness of the treatment of irregular migrants.

It is useful to consider, as a starting point, whether undocumented migrants have become direct objects of protection, as in the case of women or children within the framework of any international human rights treaty.

Bosniak (1991) highlights the point that, prior to the 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), protection of the human rights of irregular migrants as a distinct group did not exist, either in international or in regional conventions on human rights. The only exception to that was the ILO Convention number 143 (1978),[14] which states under Article 9:

[14]This ILO convention has not been ratified by Spain, Greece or Turkey.

> Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularised, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.

Additionally, another international convention, the UN Declaration on the human rights of individuals who are not nationals of the country in which they live (1985), also addressed the human rights of undocumented migrants. However, the declaration has not been much of use as it is non-binding and fails to cover clearly or comprehensively the rights and the specific conditions and needs of undocumented migrants (Bosniak, 1991). On the other hand, when it comes to the 1990 ICRMW, Bosniak states that the Convention protects the "vast majority of migrants in an irregular status in the territory of contracting states" (1991: 740). This obliges state parties to offer undocumented migrants "a range of civil, social, and labour rights" that include, among others, "due process of law in criminal proceedings, free expression and religious observance, domestic privacy, equality with nationals before the courts, emergency medical care, education for children, respect for cultural identity, and process rights in the detention and deportation context" (740-741). Thus, "[t]he Convention advances how the international community conceives the application of human rights in its provisions for 'equality of treatment' between female and male migrant workers, between documented and undocumented workers, and between nationals and non-nationals" (von Oswald and Schmelz, 2009: 22). Nevertheless, the Convention is still somewhat ambivalent in relation to the protection of the rights of undocumented migrants.

First of all, the Convention exhibits a certain reluctance while protecting the rights of migrants, as it prioritizes national sovereignty, particularly regarding regularizations of irregular or undocumented statuses. An example of this situation is stated in Article 35 of Part III:

> Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any right to such regularization of their situation.

In relation to this, Bosniak (1991) argues that the Convention provides only partial protection to undocumented migrants as it over-emphasizes the sovereign rights of the state while trying to reach a balance between state sovereignty and the protection of migrants' rights. In other words, "the Convention accommodates the competing concerns about sovereignty and human rights by substantially incorporating them both. It counterposes rights narrowed by state immigration interests against state immigration interests curtailed - though only minimally - by rights" (Bosniak, 1991: 758). Thus, "in an international society in which state sovereignty remains the paramount ordering principle, undocumented migrants present human rights law with an especially hard case" (Bosniak, 1991:765).

The treatment of undocumented migrants by the Convention becomes yet more ambivalent when the protection of undocumented migrants' rights is considered in relation to the protection of documented migrants' rights. On that matter, Bosniak (1991) refers to the following part of the Convention:

> While contracting states must meet the minimum standard of treatment of irregular migrants prescribed in Part III of the Convention, the rights provided these migrants need not be as extensive as those which must be afforded to migrant workers and members of their families who are in regular situation in the state of employment. State parties are entitled to discriminate against

> undocumented migrants with respect to rights to family unity, liberty of movement, participation in the public affairs of the state of employment, equality of treatment with nationals as regards the receipt of various social services, equality of treatment for family members, freedom from double taxation, and further employment protections and trade union rights, among others. (Part IV and V of Convention, Articles 36-56 and 57-63, and Article 70.) (741)

Together with these ambiguities towards the protection of the rights of irregular migrants, the ICRMW has one other very important shortcoming: it was signed as of 2009 only by 57 countries, almost all of which are in fact migrant sending countries, such as Senegal, Mexico, Ghana, Bangladesh, and Azerbaijan. In other words, none of the migrant receiving countries signed it, including the European Union member states, the United States, Canada and Australia as of August 2011.

This discussion on international treaties in general and the ICRMW in particular challenges the claim that international human rights norms compel states to protect the rights of aliens because of the evidence of non-compliance, particularly on matters concerning irregular migrants. That is, there are doubts regarding the capacity of these norms to oblige nation states to provide social protection for *everyone* within their borders by suggesting that the rights of persons are independent of their rights as citizens. Furthermore, the extent of such obligations to protect deriving from international norms is even more critical and problematic in relation to the rights of irregular migrants, whose presence within the state more or less contradicts the laws governing existing aliens in those states. Therefore, Soysal's and Jacobson's works are important as they constitute a reference point that legitimizes the protection of the rights of irregular migrants in the international arena. However, international human rights norms are incapable of becoming powerful

inhibitors that may block the implementation of more restrictive immigration policies at the national level so as to make the treatment of irregular migrants more liberal. That is, international human rights norms do not explain why and to what extent states protect irregular migrants' rights.

3.3. Democratic Accountability Mechanisms

It has been argued that a major polemic in the migration field has emerged around the question of to what extent or how effectively liberal nation states can control immigration (Guiraudon and Lahav, 2007: 6). Discussions formulated around this 'polemic' dispute whether there are certain liberal constraints on states while they are trying to control or restrict the number of foreigners coming into their territories. Guiraudon and Lahav (2007) argue that, during immigration policy-making, "policy-makers in liberal democracies need to reconcile security interests and traditional concerns of publics with those of liberal norms and free trade" (8). They add that, while making these calculations concerning their existing interests, state institutions shape various logics (e.g. labour market logic, populism logic, security logic). Additionally, they also influence which actors prevail in the policy field (9). Thus, according to Guiraudon and Lahav (2007), variation among countries in terms of their migration policies happens as the result of the varying "institutional make-up" of these countries (9).

This study similarly questions whether or not there are any such liberal constraints upon nation-states in their treatment of irregular migrants' rights, such as access to health care and education. The democratic accountability mechanisms of civil society activism and judicial activism are considered as liberal constraints that

may positively impact on the protection of the rights of irregular immigrants. In other words, I argue that, rather than variations in the influence of post-national structures, such as international human rights norms or Europeanization[15], it is the impact of civil society activism and judicial activism as democratic accountability mechanisms that has the potential to improve state policies and political outcomes concerning the rights of irregular immigrants.

The reason for focusing specifically on democratic accountability mechanisms rather than any other political variable can be related to broader theoretical discussions within comparative politics concerned with the interaction between state and society, and parallel discussions on structure versus agency as explanatory variables. More specifically, these discussions advance the following questions in the comparative politics literature. While explaining a particular policy outcome, in this case protection of irregular immigrants' fundamental rights, should researchers consider the state and its related actions as mere reflections of society and societal pressures, or should they treat the state as an autonomous agent, which has a certain independence from societal pressures? Additionally, as a parallel line of discussion, should researchers consider a policy outcome as a product of individual actions, interactions, or a product of broader structural pressures, such as socio-economic systems?

Both of these theoretical discussions have their origins in 19th century theorizing on society and social change by influential theorists like Auguste Comte, Karl Marx, Emile Durkheim and Max Weber. Concerning the first question, which focuses on the interaction between state and society, a tendency emerged, especially within the structural-functional, Marxist, and pluralist accounts of the 1950s and

[15] A discussion on the possible effect of the European Union is made in a following section of the chapter.

1960s, "to reduce politics to society, to see the nature of governments and states mainly as the outgrowth of certain social patterns" (Migdal et al., 1994: 2). These accounts of the political were heavily criticised, and in the 1970s and 1980s a rival approach emerged that emphasized more Weberian accounts of state-society interactions. That is, more 'statist' accounts of politics were developed that considered the state as being more than a simple extension of broader social structures. One of the most prominent theories within this rival literature was put forward by Theda Skocpol in *Bringing the State Back In* (1985). Skocpol emphasized that there is a certain degree of "autonomous state action" that should lead one to consider the state as an "actor" in itself.

> Until recently, most work on the determinants of social policies has emphasized their socioeconomic roots and has treated states as if they were merely arenas of political conflict or passive administrative tools to be turned to the purposes of any social group that gains governmental power. Currently, however, scholars are exploring ways in which social policymaking may be shaped by the organizational structures and capacities of states and by the political effects of previously enacted policies. In short, states are being reconceptualised as partially autonomous actors and as consequential structures and sets of policies. (Skocpol and Amenta, 1986: 147)

Skocpol's argument illustrates how the related literature has sought to disentangle the state from society in order to highlight the complexity of the former. Migdal reviewed these and similar accounts from the state-oriented literature in order to develop a more balanced view of the state-society interaction by formulating a perspective of "State in Society" (1994, 2003). While Migdal agreed with previous critics that it was misleading to view the state as a mere reflection of society or societal pressures, for him it was also misleading to perceive the state as a "holistic" and "organic entity" independent of societal structures and pressures. In other words,

according to Migdal, some of the studies within the 'statist' literature had gone too far while disentangling the state from society. According to Migdal et al. (1994), "[s]tates are parts of societies. States may help mold, but they are also continuously molded by, the societies within which they are embedded" (2). In other words, "[t]he state is not a fixed ideological entity. Rather it embodies an ongoing dynamic, a changing set of goals, as it engages other social groups" (Migdal, 1994: 12). He adds that "[r]esistance offered by other social forces to the designs of the state, as well as the incorporation of groups into the organization of the state, change its social and ideological underpinnings" (Migdal, 1994: 12). The way that I study particular forms of irregular immigration policies in relation to democratic accountability mechanisms carries a similar theoretical orientation in relation to the state-society interaction as put forward by Migdal. If protection of the rights of irregular immigrants is considered to be a political outcome, I argue that this outcome must be the result of a complex interplay between the state and the society, and I think that the concept of democratic accountability mechanisms, by including a notion of civil society activism, perfectly illustrates this complex interplay as put forward by Migdal. First, in this way, I recognise that in the production of this outcome the state should not be totally autonomous from the society in which it is embedded. That is, the existence of different goals and principles in a society has the potential to "mold" a state's pre-existing goals, principles and priorities. Although Migdal (1994) did not equate the society/societal influence to civil society, I would claim that the activities of pro-immigrant civil society represent a "social force" that reflects a particular segment of society in which the state is embedded, and which has the potential to offer resistance to its policies. Thus, the inclusion of civil society activism through the concept of

democratic accountability mechanisms in the attempt to understand the development of a particular irregular immigration policy also provides the particular stance from which I view the interaction of state and society. However, my inclusion of civil society activism as a theoretical frame to understand a particular policy outcome is rather different from pluralist accounts of politics and state, as I also recognise the complex organization of the state as put forward by both Skocpol (1985) and Migdal (1994) in rather different ways. This distinction becomes clearer in relation to both Migdal's second criticism towards the 'statist literature' in disaggregating the state, and also in later discussions on structure versus agency.

Migdal (1994) also criticizes the 'statist' literature for considering the state as "holistic" in that it disregarded the existence of multiple layers within the state structure, that include officials, bureaucrats, top executives, and also various offices, such as legislative bodies, courts, police units and so on. Thus, Migdal (1994) recommends us "to disaggregate the state" rather than treat it as an "organic entity" (16). The use of the concept of democratic accountability mechanisms while explaining political outcomes concerning the rights of irregular immigrants is also important as the concept includes a recognition of both vertical or bottom-up mechanisms of accountability (i.e. civil society activism) and horizontal mechanisms of accountability that happen across different institutions, agencies and offices of the state structure, such as the judicial review of legislation. Thus, Migdal (1994) argues, the state is a complex organization that should be disaggregated. Within the different layers of the state structure, different goals and principles may be operating towards a particular policy. Based on the existing literature regarding the courts' impact on immigration policies (such as Joppke, 1998 and Guiraudon and Lahav, 2000) I

propose that judicial activism has the potential to push irregular immigration policies in different directions. For this reason, I include judicial activism/review within my conceptualisation of democratic accountability mechanisms. In this way, I also, like Migdal (1994), refrain from treating the state as a "holistic" and "organic entity". This inclusion also distances the theoretical framework of this study from purely pluralist accounts of political outcomes, as the democratic accountability concept adopted here recognises that there is more to a policy outcome than the mere inclusion of different societal interests.

This last point relates also to the second parallel theoretical debate in the comparative politics literature concerning structure versus agency approaches in explaining political outcomes. "These two approaches demonstrate two different kinds of explanatory strategies in social science - one from structure to action, the other from action to structure" (Wang, 2010: 101). The former approach claims that political outcomes are a result of grand socio-economic or political structures of some kind. As an illustration, classical Marxists claim that the economic structure of a society also determines its political and cultural structures, and various political outcomes (Wang, 2010). On the other hand, the state could also be considered as a general, holistic structure that determines the development of particular policies and political outcomes. Goldstone (2010), for example, states the following on this matter:

> Theda Skocpol, Charles Tilly, myself, and others of that ilk were just material structuralists; we thought that one could build a story of pivotal historical moments from a description of the material resources that states, elites, and popular groups had, or fought over, and could bring to bear on their conflicts. The younger generation turned to culture, but they were for the most part cultural structuralists. … [T]hey are talking about how cultural structures constrain and drive social behaviour (359).

The latter approach pays more attention to the role played by "revolutionary leaders", "different concepts and visions of social and political change", and to the "interactions" of different "personalities and events" operating at both societal and state levels (Goldstone, 2010: 366). In other words, complex forms of individual action and interaction at different levels of state and society are considered to provide the main explanations of political outcomes. For example, according to pluralist theories, which can be considered as providing an agency approach, policy outcomes result from the complex interactions between various societal actors and interests, with the state being merely a venue for these interactions and negotiations (Wang, 2010).

In putting forward his "state in society" perspective, Migdal criticises both purely structural theories of the state that perceive it as an organic whole, and also purely agency-based explanations such as pluralist theories. In line with Migdal's arguments, this research also refrains from offering either purely structural or purely agency based explanations of the protection of irregular immigrants' rights. In other words, my study is neither structural nor agency based, but employs an integrated view of structure and agency: I do not consider the state as a holistic or organic structure that is the source of a totally "autonomous" repertoire of actions. Instead, I also take into account the interactions between state and society during the development of policies, together with the existence of diverging goals and principles at different levels of the state, specifically, the policy orientations of the judiciary. Therefore, I both disaggregate the state and also take into account policy resistance coming from the societal level by including in my analysis the activities of pro-immigrant civil society organizations. On the other hand, this study also rejects

merely agency based explanations because, to a certain extent, I also recognise that the state has a certain level of autonomy regarding its policies concerning irregular immigration, and may act as a solid structure. In other words, I also consider the state as having a pre-established policy orientation concerning the irregular immigration issue that has not necessarily resulted from interactions with societal influences. As a result, I think that state can mold societal interests, just as it can in turn be molded by these interests, as proposed by Migdal (1994). I therefore argue that the concept of democratic accountability perfectly integrates the structure versus agency debate, as it allows the researcher to disaggregate the state by taking into account different levels of action within it, and also enables the integration of societal pressures and resistances to particular policy outcomes into the analysis.

3.3.1. Democratic Accountability as Catalyst for 'Good' Treatment of Irregular Migrants

There is a significant number of studies analysing the concept of democratic accountability, either at national or global levels (for some examples, see Schedler, 1999; Held, 2004; Diamond and Morlino, 2005; Bovens, 2007; Philp, 2009; Heritier and Lehmkuhl, 2011). In this study, I am particularly concerned with the democratic accountability mechanisms that operate at the national level.

For Schedler (1999), accountability has two main connotations: "answerability" and "enforcement". Answerability requires the monitoring and justification of policies. Thus, accountability brings with it the obligation to release information on one's actions, and the duty to offer explanations in order to justify them. Enforcement, meanwhile, involves the reward or the punishment for these

actions, which not only includes particular policies, but also the overall nature of the policies that have been subject to "answerability".

Generally, the democratization literature differentiates between two types of accountability: vertical and horizontal. According to Schedler (1999), horizontal accountability develops among equals. In other words, different state institutions and offices hold each other accountable without being involved in a hierarchical interaction. Judicial review is a good example of horizontal accountability. Vertical accountability, on the other hand, occurs between unequals, among whom political power is unequally distributed. One good example of vertical accountability is electoral accountability, where the citizens sit in judgment over incumbent elected officials. Diamond and Morlino (2005) add to this definition of vertical accountability justification for the actions of government officials, demanded, monitored and questioned by civil society organizations. As they put it, "[t]he dynamics of vertical accountability extend beyond elections and the interplay between voters and their elected representatives, encompassing also the efforts of civic associations, NGOs, social movements, think tanks, and the mass media to hold government accountable in between elections" (Diamond and Morlino, 2005: xix). In other words, civil society participation, or the activism of various civil society organizations can be considered as a particular form of democratic accountability.

This study adopts these definitions of democratic accountability in order to question how civil society organizations, operating at the national level as vertical accountability mechanisms, manage to influence the treatment of irregular immigrants with respect to their rights, and also how these mechanisms influence the

rights conditions of irregular immigrants. This research also explores the effect of judicial review as a horizontal accountability mechanism on the rights conditions of irregular immigrants. In relation to these questions, I propose that, in the domestic context, these mechanisms do have the potential to positively influence the rights conditions of irregular immigrants because, as put forward in the previous section, these mechanisms may have different policy goals and principles and they may have the potential to provide social resistance against the state's policies and politics. Therefore, I propose that the activism of pro-immigrant organizations of civil society may improve the protection of the rights of irregular immigrants by the state. In addition, I also propose that judicial activism concerning the protection of the rights of irregular immigrants, as an activation of a horizontal accountability mechanism, also has the potential to improve the protection of the rights of irregular immigrants, as it may have different policy goals and principles that are more inclusive of irregular immigrants than those of the legislative and executive branches of the state.

3.3.2. National Courts and Jurisdiction as Democratic Accountability Mechanisms

Joppke (1998) is critical of the 'globalists' arguments, simply because these arguments put the sole emphasis on international human rights norms in explaining the protection of the rights of migrants and the limits on state sovereignty. He believes that such arguments "avoid the 'detailed process-tracing' by which international human rights laws' soft power may become domestically effective" (269). He further argues that "accepting unwanted immigration is inherent in the liberalness of liberal states" (292). Although there has been a 'zero-immigration

policy' in most European states, these states have nevertheless accepted more and more immigrants since the 1970s. According to Joppke (1998), this situation is the result of legal processes: legal constraints arising from liberal national constitutions in combination with moral obligations have produced a "self-limited sovereignty" so that European states continue to accept unwanted immigrants. That is, they are "bound by the rule of law, which in important respects protects the rights of persons and not just of citizens" (268). Joppke (1998) concludes that "[n]ot globally limited, but self limited sovereignty explains why states accept unwanted immigrants" (270).

I think that Joppke's explanation of the liberalness of liberal states refers in fact to those horizontal accountability mechanisms operating within a democratic state against governmental actions. In his example, European states have sought to close the doors to further immigration, but this has proved impossible due to these states' liberal constitutions, which activate legal processes on behalf of the protection of the fundamental rights of both citizens and non-citizens alike. Viewed through the lens of the democratization literature, such an emphasis on the protection of rights appears to emanate from the presence of horizontal accountability in a democratic regime.

Similarly to Joppke, Guiraudon and Lahav (2000) also ask two important questions. "To what extent do international legal instruments constrain the actions of national policy makers?" "How have nation-states reacted to international constraints and problems of policy implementation?" (Guiraudon and Lahav, 2000: 163/ abstract). Guiraudon and Lahav recognize the possibility that international norms have a certain capacity to restrict and limit shared understandings on treatment of

non-citizens. However, they also argue that the influence of international norms on human rights should not be overemphasized, as these have certain limitations when it comes to their universal application irrespective of citizenship status to all foreigners. For example, states reserve political rights mainly to their citizens. I put forward the same argument in the previous section on international human rights norms, while arguing that the mere existence of these norms is insufficient for providing answers to the research questions addressed in this study. Guiraudon and Lahav (2000) also emphasise that "the prerogatives of a nation-state when it comes to refusing access, residence, or naturalization to its territory have not been put into question" (168) in international norms. As a result, according to Guiraudon and Lahav (2000), these norms protect the rights of foreigners to a certain extent; however, what actually stops these states from imposing more restrictive measures on foreigners' rights are the liberal domestic norms which are guaranteed by constitutions, legislation and jurisprudence. Thus, Guiraudon and Lahav (2000) provide an argument similar to Joppke's (1998), while acknowledging the rule of the European Court of Human Rights as an example of this situation. They suggest that, "rather than breaking new ground, the ECHR has confirmed, reinforced, and clarified the pertinence of pre-existing national legal principles" in relation to the protection of foreigners' rights (Guiraudon and Lahav, 2000: 171). In this argument, one observes that the power of national level protection is claimed to be stronger than post-national protection at both the international and the European level. In another study, Guiraudon (2000B) supports this thesis. She analyses the extent to which the norms of the European Court of Human Rights (ECHR) and the European Court of Justice on non-EU nationals (as foreigners and non-citizens) can affect domestic law. She finds that

there is only a "limited legal basis on which European courts can apply human rights to protect non-nationals" (1114), and that, even when there is such a basis, the ECHR is reluctant to use its power. As a result, Guiraudon (2000B) concludes that the jurisprudence of the European Courts "followed the development of national laws, regulations and court rulings that upheld similar values" (1114). "The building blocks had been laid at the national level to be reasserted internationally, strengthening the chances that the norms would diffuse downwards again." (1114)

Thus, it is not global human rights regimes that protect aliens' rights and constrain sovereign state behaviour, but instead it is national democratic human rights discourses that constrain arbitrary state behaviour, mainly through national legal processes that activate national constitutions. This explanation, similarly provided by Joppke (1998), Guiraudon and Lahav (2000), can also be expressed in terms of the discussions on horizontal accountability, where national courts, hence the national judiciary, emerge as an important democratic accountability mechanism through the cases being opened against restrictive government actions for denying the rights and freedoms of all people, not only citizens. Therefore, these discussions on national courts' activism concerning foreigners' rights emerge as another possible answer to the research questions of this study. In other words, it is important to explore whether or not the judiciary and national courts emerge in practical terms as active supporters of the rights of irregular migrants and if they do, whether or not this activism could also account for divergences in treatment across countries.

The role of the national judiciary in protecting the rights of non-citizens has also been put into question through case studies. For example, Statham and Geddes

(2007) argue (with regard to the British case) that the national judiciary has a certain potential to check the restrictionist policies of the executive and the legislative, so that sometimes they even protect the rights of migrants. However, they go on to argue that the courts' role and actions are "more ambivalent" than Joppke (1998) believes (55): "Our evidence shows a British judiciary that is visible and expansionist within limits, but clearly not to an extent that could potentially curb the strongly prominent and restrictionist government." (54-5). That is, national courts and judicial review have the potential to protect the rights of irregular migrants by monitoring, questioning or even overturning the decisions of the executive for being against human rights norms; yet, as Statham and Geddes (2007) show, in practice, judicial review may not be as powerful as has been theorized, at least not for each and every democratic rule. In this study as well, it is proposed that the national judiciary's influence is rather limited as compared to the activism of civil society on this matter. Nevertheless, it is still important to question the involvement (or not) of the courts to determine how accountability works in a democratic regime in a specific policy area.

3.3.3. Civil Society as a Democratic Accountability Mechanism

Civil society entails the citizens of a state acting in a collective manner in the public sphere to articulate and exchange their interests, preferences, ideas, etc. The goal of coming together in this manner is to make demands of the state, to hold the politicians accountable and to improve the structure and functioning of the state (Diamond 1999). In a democratic regime, civil society organizations, such as civic

associations, NGOs, social movements and think tanks, act as significant accountability mechanisms.

In migration studies, the impact of civil society organizations on the nature of policies has been scrutinized in various studies. Freeman (1995, 2007), for example, can be counted as one of those investigating the impact of civil society on migration policy-making, although his main concern is not necessarily the role of civil society. He depicts the ways in which civil society organizations participate in migration policy-making to cause the emergence of different types of policies and politics around the issue. His discussions have important implications for the concerns of the present research, as they are concerned with the involvement of actors other than the government in the policy-making process.

Freeman (2007) adopts a rather unusual approach while explaining migration policy-making. He starts with the idea that different types of immigration produce different types of immigration policies and politics. Thus, his starting point carries similarities with the classical distinction made by Tomas Hammar (1985) between immigration policy concerning the management of flows and immigrant policy on the treatment of foreigners once they are within the state. Freeman argues that there, different "modes of politics" emerge around different kinds of migration policy. For example, permanent residence visa policy has "concentrated benefits" only for a certain group of people, such as visa holders, their families and employers. On the other hand, the policy does not have "concentrated costs" for any specific group as "[n]o one bears any direct cost for any particular visa granted" (32), but instead it might have "diffuse costs" as it is a certain type of distributive policy. As a result, a

"client mode of politics" emerges around a permanent residence visa migration policy (Freeman, 2007).

Freeman also considers the management of illegal immigration flows at the borders, although he does not refer to the policies adopted towards irregular migrants who are already within the country. In the present study, I consider the treatment of irregular migrants as a specific immigration policy type within the same analytical framework as Freeman's, and the modes of politics that emerge around it are more or less similar to those emerging around asylum policy as described by Freeman (2007): a regulatory kind of policy with diffuse benefits and concentrated costs, producing entrepreneurial politics.

According to Freeman, asylum politics is a relatively recent development featuring "agitated publics, mobilised interest groups, partisan conflict, and, in some instances, activist national courts." (2007: 38). For him, asylum policy has two distinct parts: management of asylum seekers who are on their way, and resettlement of refugees. "Asylum and refugee policies exhibit characteristics of concentrated distributive, redistributive, and regulatory politics" (39). Client politics emerge more around the granting of refugee status than the management of asylum-seeking. However, the main clients are not possible refugees, but rather "humanitarian groups promoting a generous programme" such as human rights organizations, international NGOs, and churches, whereas the national courts "'have emerged as arbiters of refugee rights" (39). Freeman also makes the point that these groups are not very powerful and are unable to exert as much of an influence in the policy-making process as "those actors organised around migrant streams where significant material

interests are at stake"(39).

On the other hand, the management of asylum seeking or the processing of asylum applications occurs within a different atmosphere in which the political discourse is more contentious and securitized, where "the costs of asylum seeking overshadow its benefits" (Freeman, 2007). Therefore, it must be treated as having a mixture of redistributive and regulatory politics. There are public costs of the asylum process, for instance, for welfare benefits. On the other hand, there is also a system of regulation in which "individual citizens benefit only marginally, whereas those whose claims are denied or delayed bear the costs of enforcement" (Freeman, 2007: 40).

I would argue that the treatment of irregular migrants already within the country, including the recognition of their fundamental human rights by providing certain social services, exhibits certain characteristics of asylum politics. The granting of certain rights to irregular migrants, such as access to health care and education for their children, leads to "concentrated benefits" (Freeman, 2007) only for the migrants themselves. However, there are also public costs, as in the case of the asylum process directly for welfare benefits. Additionally, the political discourse around irregular migration is much more contentious and securitised than for the asylum process, as these migrants' presence within the state is problematic in relation to existing aliens' laws, and they are perceived and referred to as "illegal" most of the time. Thus, irregular migrants are usually a relatively narrow and powerless, although distinct and disadvantaged, group. Furthermore, their being regarded as "illegal", means they lack the capacity to interact legally with national institutions to

access the resources necessary to mobilize, organize and influence policy makers. Nevertheless, in the case of irregular migrants too, humanitarian groups, international NGOs, churches, sometimes trade unions, and various other civil society organizations become "clients" who advocate the rights of irregular migrants.

Adopting Freeman's analytical framework (1995, 2007) reveals who might be the stakeholders in the policy-making process concerning irregular migrants, while also providing certain insights into the nature of the relationship between these actors and the government. However, Freeman does not investigate the impact of such non-governmental actors, onto the liberalness of the policies being adopted towards foreigners, although his analysis provides certain hints on this matter. Therefore, it is important to explore to what extent these actors have the power to compel states to recognise the rights of irregular migrants, and following that, whether they can bring about a divergence among the countries in terms of the degree that they recognise irregular migrants' human rights. Taking this into account, this study considers those clients, and the activism of pro-migrant organizations, human rights groups, trade unions and other civil society organizations and movements, as democratic accountability mechanisms at the national level that have the potential to influence policy-making on irregular migration.

Statham and Geddes (2007) also examine the role of civil society, or the "organized public", in immigration politics, and question "to what extent the 'public' - i.e., organised sectors of civil society – exerts influence over policies, and whether it pressurises them toward restrictionism or expansionism" (50). They criticise Freeman's (2007) explanation of immigration politics and civil society participation

through objective interests, and the objective cost and benefit calculations of immigration politics. As they put it:

> Collective mobilisation is not a direct outcome of the distributed costs and benefits of immigration policies, but of the extent and way immigration is politicised and publicly mediate, and how certain positions are made to appear more feasible, reasonable and legitimate, compared to alternative definitions of political reality. Particularly important is how powerful political elites, acting through institutions and discourses, shape opportunities for other collective actors to perceive their material and symbolic interests, and see themselves as sufficiently affected to collectively mobilise, or not. (Statham and Geddes, 2007: 51-2)

Their findings suggest, firstly, that civil society in Britain is in favour of expansionist immigration policies that support the rights and interests of the constituency of migrants, while extreme right and anti-immigration organizations have only a rather very small scale presence. Secondly, they show that the NGOs concerned specifically with migrants' rights and welfare are the dominant actors within the pro-migrant civil society, rather than employers and ethnic minorities, as had been claimed by Freeman (1995, 2007). Finally, their findings indicate that trade unions, churches, professional groups, solidarity, human rights and welfare NGOs, and anti-racist organisations also share the same interests with specifically immigrant-focused NGOs, although they are less vocal in their claims.

Utilising a social movement research approach, Laubenthal (2007) seeks to explain the development of pro-regularization movements at the civil society level in France, Spain and Switzerland through a comparative perspective. The goal of her research is to identify certain preconditions in domestic contexts that enable the emergence of irregular migrants' pro-regularization movements. Laubenthal (2007) argues that immigrant and civil society organizations are at the centre of the pro-

regularisation movements. In the Spanish case, she argues that "the core supporters of the protests were newly founded actors. These were anti-racism and human rights groups that represented a new segment of civil society, which criticised Spanish immigration policy from a human rights and/or anti-globalisation perspective and endorsed an unconventional action repertoire" (125).

That is, civil society organizations appear as the main supporters of the cause of irregular migrants in national settings. Acting as important democratic accountability mechanisms, they appear to have the potential to attract attention to the strict and undemocratic nature of existing policies concerning irregular migration. However, this raises one important question: Once these organizations have the ability to put pressure on the policy makers, are they also effective enough to change the nature of policies toward irregular migrants and alleviate the rights and conditions of irregular migrants?

The studies by Freeman (1995, 2007), Statham and Geddes (2007), and Laubenthal (2007) all illustrate that civil society activism already includes a pro-migrant stance before governmental actions and civil society organizations emerge as important stakeholders pressing for less restrictive policies. My research also follows the same line as these studies, as it examines the impact of civil society organizations on the protection of the rights of irregular migrants. However, as an important extension to these studies, the present research takes their discussions one step further by also questioning whether or not civil society organizations are actually active enough in practical terms to bring about a more liberal policy in the relatively less-researched policy area of irregular migrants. Additionally, by focusing

on three different cases, I also question whether or not civil society organizations have the capacity to bring about divergence among different countries in terms of the protection of irregular migrants' rights.

3.4. Europeanization as a Background

In Europe there is an increasing trend toward harmonization and convergence of laws and regulations concerning irregular migration due to European integration in the areas of justice, freedom and security. However, these policies are mainly concerned with the management of irregular migration at Europe's borders. Thus, Europeanization in this policy field dictates certain types of policies that mainly aim to stop or prevent illegal border crossings. Some of the main policies of the European Union (EU) on irregular migration are as follows: cooperation with third countries on issues such as joint patrols and surveillance; further strengthening of the borders; fighting against human trafficking; tackling illegal employment; developing a return policy; improving information exchange between member states.[16] When it comes to those irregular migrants who are already within the country, EU countries do not have a fully developed position and policy in terms of fundamental social and human rights. Some of the suggested measures relating to these migrants concern tackling illegal employment through employer sanctions and developing an effective return policy. Regarding regularisations, the EU has proposed that:

> [g]iven the limited information available on practices, effects and impacts of regularisation measures, a study will be conducted which would constitute the basis for future discussions on this issue, including on whether there is a need

[16] A more detailed summary of the EU policies on irregular immigration is available on the official website of "Justice and Home Affairs" Retrieved December 26, 2011 from: http://ec.europa.eu/justice_home/fsj/immigration/illegal/fsj_immigration_illegal_en.htm#part_2

> for a common legal framework on regularisations at EU level. (EU Home Affairs, n.d.)[17]

Overall, when it comes to the categorization, recognition (or not), and treatment of irregular migrants in relation to their fundamental human rights, the EU does not have a clearly developed position.

As the countries under study include two European Union member states and one candidate country, it is easy to observe an EU effect interacting with each country's domestic ways of dealing with immigration.[18] However, the EU does not have a common position regarding the recognition and/or protection of irregular migrants' fundamental social rights yet. The relevant EU *acquis* mainly covers policies concerning identification, detention, readmission and expulsion. At the beginning, in the 1970s, the European Commission adopted a dual approach towards irregular migration: on the one hand, it aimed to prevent irregular migration, while on the other, it aimed to address the abusive conditions facing irregular migrants (Cholewinski, 2000). In the 1990s, the Commission retained this dual approach, although protecting the rights of irregular migrants was rather neglected in intergovernmental meetings in favour of a more developed control and security policy. The main concern was to block illegal employment, to facilitate expulsion and readmission, and to combat smuggling. Later on, the Tampere Conclusions of 1999 brought about a more security-oriented agenda for managing irregular migration, emphasizing the prevention of irregular migration and the punishment of those who supported it (Cholewinski, 2000: 368). As a result, the EU *acquis* on the "fight against illegal migration and return" covers various areas, such as information

[17] The quotation is taken from the EU webpage titled "Wide-ranging common actions to combat illegal immigration at EU level and promote return of illegal immigrants", No page number is available.

[18] For review of interaction between Europeanization studies and different nation states see Bolukbasi et al. (2010).

and coordination exchange on irregular migration, coordination and cooperation concerning the removal and expulsion of irregular migrants, a penal framework for the supporters of irregular migration, coordination of immigration liaison officers, readmission agreements with third-countries, and international agreements on human trafficking, which have been implemented through certain Council, Commission, and Parliament decisions, Council directives, regulations, recommendations and resolutions (*Acquis* of the European Union, 2009).

This approach means that EU common decisions do not explain much when it comes to the categorization, recognition or protection of the basic social rights of those irregular migrants who continue living within the receiving country. However, there are certain other decisions/positions at the EU level which might be related to irregular migrants' human rights. These mainly relate to social inclusion/exclusion in general; as a natural consequence of these decisions one could expect to observe a general EU discourse within which domestic concerns operate in relation to the recognition (or not) of irregular migrants' rights. It is not possible (nor necessary) to go through all such decisions at the EU level, taking into account the general concern of this chapter. Yet, it might be useful to refer to the European Social Model specifically as it has relevance for migration as well, and can give us an idea of what kind of a background Europeanization provides in terms of social inclusion.

3.5. The European Social Model

The EU described the 1994 European Social Model "in terms of values that include democracy and individual rights, free collective bargaining, the market

economy, equal opportunities for all, and social protection and solidarity" (Eurofound, 2011). During the Nice Summit of 2000, the EU adopted a new European Social Policy Agenda (SPA) to be the basis of the European Social Model, and later on, in 2005, the EU came up with a new Social Agenda to run until 2010. The key role of the agenda was defined as "promoting the social dimension of economic growth", stating that the social agenda "supports the harmonious operation of the single market while ensuring respect for fundamental rights and common values" (EU, Communication from the Commission, 2005). The Commission Communication on Social Agenda (2005) also identifies two priority areas. The first concerns achieving full employment and "making work a real option for all, increasing the quality and productivity of work, and anticipating and managing change". In order to reach full employment, among other suggested actions, two are worth noting here. One is increasing the adaptability of workers and enterprises; the other is attracting more people to enter and remain in the labour market. The other priority area is attaining equal opportunities for all and, by this way, to address poverty and discrimination, and provide social inclusion and diversity.

At this point, it is important to refer to the EU's understanding of social inclusion and exclusion. In the 1980s, the term social exclusion within the EU had certain specific connotations, although these had been transformed by the 1990s (Schierup et al., 2006). In the 1980s, social exclusion used to refer more to the process of being left outside the protection of the welfare system. Thus, the understanding had more to do with the boundary between the people who could receive welfare protection and those who could not for various reasons, such as unemployment, irregular immigration status, and so on. In other words, social

exclusion/inclusion entailed a "redistributive welfare policy". However, with the signature of the Maastricht Treaty in 1992, EU policy changed so that the previous focus was soon superseded by an alternative notion of social exclusion which stressed labour market integration as a precondition for social cohesion (Schierup et al., 2006: 55). In other words, exclusion signified exclusion from paid work, and achieving solidarity did not retain any relation to a redistributive welfare state (Schierup et al., 2006).

This transformation of the understanding of social exclusion, as described by Schierup et al. (2006), also tell us a lot about the degree to which the European Social Model prevents the social exclusion of migrants. As social exclusion is understood more in terms of employability rather than being excluded from social protection, the migrants' only social problem appears to be exclusion from the labour market, which implies that the main solution appears to be integration into the labour market. Therefore, when the 2005 Communication of the Commission on the Social Agenda stated that all the thinking behind the agenda should be linked to the whole question of migration, it was referring to how migrants could be integrated into European labour markets, although the document does not elaborate further on how and where exactly this thinking should be linked to the 'whole question of migration'. As the social exclusion understanding has not signified the exclusion from welfare protection and citizenship rights anymore, highlighting labour market integration as the sole solution for migrants' social problems leaves out the direct protection of their rights or their positive integration, and for that reason, the European Social Model cannot entail solidarity, anti-discrimination and poverty reduction for this group of people. This situation is much more common when it

comes to protecting the rights of undocumented labour migrants, who exist in large numbers also in two of the case studies in this research.

In Spain and Greece (as well as in Portugal and Italy), migrants are replacing native labour in the informal economy, and the very survival of certain economic sectors now depends on cheap labour, which is most of the time provided by migrant workers. Such informal work is present particularly in textiles-clothes, repair workshops, transport, entertainment (in Italy), and also in agriculture, tourism, construction, domestic services, and small manufacturing firms (in Greece). The employment of irregular labour migrants is greatest in those sectors where informal work is more common (Toksöz, 2007). Therefore, in some European Union member states, integration into the labour market is very easy for migrants, as they work informally and without documentation. However, there appears to be no positive integration included within the European Social Model that directly protects the rights of migrants who happen to be 'integrated' into the labour market in this manner. Instead, with the Amsterdam Treaty of 1997, the European Union has clearly stated its position towards undocumented migration by discursively creating it as a social threat. This securitization discourse seems to have led to greater success in taking common EU decisions concerning immigration as intended by the Amsterdam Treaty in contrast to any other field (Samers, 2004: 31). As a result, it can be expected that the European way of doing things provides a more restrictive backdrop to discussions on the protection of irregular migrants' rights.

From a different perspective, Guiraudon (2000A), among others, argues that the internationalization of migration policy-making at the EU level has led to "venue

shopping", and enabled national law and order ministries to pursue their security- and control-oriented migration policies much more easily in this venue, where they have been able to remain safe from the pressures of national courts, other ministries, governmental actors, and pro-migrant NGOs. Therefore, the EU decision level indirectly leads to the adoption of more restrictive policies as nationally elected officials can easily blame the EU for their political decisions as well as limit democratic accountability mechanisms operating at the national level.

3.6. Concluding Remarks

Within this review, I have focused on existing theoretical studies that explore and explain the protection of the rights of non-citizens, particularly migrants, in order to understand what might lead nation-states to recognize the rights of irregular migrants and hence offer them certain services, or not. The discussions so far lead to a number of important conclusions and explanations related to the main questions of this study.

First, international human rights treaties or global human rights regimes are considered as legitimizing grounds for the fact that "Undocumented Migrants have Rights!" (Biocchi and LeVoy, 2007). However, there are some ambiguities regarding their effectiveness in protecting the rights of irregular migrants, and actually constrain state behaviour. Moreover, the claim that international human rights regimes constrain states from adopting more restrictive migration policies (Soysal, 1994; Sassen, 1996; Jacobson, 1997) has been criticized, in the sense that it is national legal systems and jurisprudence rather than international human rights

regimes that actually secure the rights of aliens (see among others, Joppke, 1998; Guiraudon and Lahav, 2000; Guiraudon, 2000B). Therefore, as national jurisprudence, and in particular court rulings, appear as important processes protecting the rights of aliens in liberal states in the existing literature, one need to explore whether these mechanisms are really effective in protecting the rights of undocumented migrants as well. To put it differently, in order to understand the protection of irregular migrants' rights it is necessary to examine the democratic accountability mechanisms at the national level that also include the efforts of civil society organizations, together with judicial review.

As a result, the main proposition of this research is that democratic accountability mechanisms, as described in the democratization literature, are one such factor determining the way in which irregular migrants are treated in a country. I also propose that it is mainly the organization or state of being of these accountability mechanisms that makes a difference among the states. Additionally, as the cases under consideration are either EU member states or a candidate country, the possible effect of supranational policy making is also important. However, I think that, on this issue, the effect of the EU is more one of providing a general backdrop, or opportunities for "venue shopping", as argued by Guiraudon (2000A), rather than having a direct and decisive impact on the way in which policies are developed. In other words, in relation to the Europeanization effect, I argue that democratic accountability mechanisms and the rule of the government interact with each other on a scene whose backdrop is supranational policy-making.

My research contributes to the existing theories and explanations in the

following ways:

First, the theoretical explanation I adopt with a review of democratic accountability mechanisms provides a re-examination of the existing explanations through the lens provided by the democratization literature. It thereby offers a new perspective by bringing together comparative politics and migration studies. Secondly, this democratic accountability framework offers a more coherent picture of a "detailed process-tracing" (Joppke, 1998) concerning the protection of the rights of aliens in a nation-state. By adopting this theoretical framework I am better able to examine the explanatory value of two important factors (national courts' activism and civil society activism) together in a meaningful manner. In other words, the involvement of the courts and civil society organizations in policy-making regarding foreigners' rights becomes meaningful as regular procedures of a democratic regime that has the goal of holding elected officials accountable for their decisions on foreigners' rights.

Lastly, the literature on civil society activism in promoting the rights of irregular immigrants is rather limited in its depiction of the results of such activism. There are very few studies that have clearly shown the nature of civil society involvement in irregular immigrants' rights issues and the effects of such involvement on policies. Taking this into account, one of the most important theoretical contributions of this research is to depict the results of civil society activism in a specific policy area while exploring the extent to which these civil society organizations have the potential to negotiate with state officials for irregular migrants' rights. The comparative analysis of three countries will also contribute to a

better understanding of this role of civil society activism by identifying patterns of divergence and/or convergence among the cases. This will increase our understanding of the extent to which civil society activism is important for the protection of irregular migrants' rights.

CHAPTER 4

METHODOLOGY

This chapter describes in detail how the research for this study was conducted, providing information on the methods and techniques employed. By explaining the methodology used, this chapter also makes clear the scientific contribution of this research to the literature on irregular migration.

4.1. Method: Comparative Case Study

This study primarily employed case study methodology in order to collect data to answer the key research questions highlighted in Chapter 1. Case study methodology has been a popular focus of studies scrutinizing research methods in social sciences, and as a result a huge literature exists on case study research (for some examples, see Stake, 1978; Lijphart, 1975; King, Keohane and Verba, 1994; Ragin, 2004; McKeown, 2004; Yin, 2009) John Gerring offers a very concise definition of the case study method (2004): "A case study is best defined as an in-depth study of a single unit (a relatively bounded phenomenon) where the scholar's aim is to elucidate features of a larger class of similar phenomena" (341). Such a definition emphasises that the case selected is not studied for its own sake, but

instead is studied in order to develop knowledge about a broader subject. That is, the case under concern is not studied solely for the purpose of providing a unique account of a specific phenomenon independent of broader and more general understandings of similar phenomena. Rather, a case study is "an intensive study of a single unit for the purpose of understanding a larger class of (similar) units" (Gerring, 2004: 342). To help achieve this larger aim, I explored the key questions of this research through three different cases, i.e. in three different countries, using a comparative approach in order to provide answers that might be applicable in relation to the subject under concern to other countries with similar characteristics. Thus, my case studies are *also* studies of a broader population.

As the above suggests, this research was also an example of *a comparative* case study in which I sought to answer the key research questions by looking for answers from within more than one unit of study. The intention behind such comparisons was to gain a fuller understanding of relevant processes by observing recurring patterns across the cases. In other words, the reason for comparison was to be able to identify whether or not the explanations proposed in this research held in the three different settings. Additionally, through the use of this method, I sought to address and analyse the basic similarities and differences between the cases in relation to the main concerns of the research.

Lijphart (1971) considers the comparative method as a basic method of inquiry. He argues it resembles a statistical model except for the crucial difference of having too small a number of cases "to permit systematic control by means of partial correlation" (684). The present research was also a 'small-N' study, in contrast to 'Large-N' studies using statistical methods. According to Lijphart, Small-

N studies are typical of research into political systems. He states that "where the cases are national political systems … the numbers of cases are necessarily restricted [such] that the comparative method has to be used" (685). Therefore, for Lijphart, certain studies naturally require small-N analysis. The main goals of this study, through the questions it posed, also required a small-N study in order to be able to scrutinise relevant political processes in a detailed manner.

Peter Hall (2003) provides another example of a clear explanation of the comparative method:

> Instead of viewing comparison primarily as an exercise in correlating a few independent variables with a dependent variable, we should understand the comparative method as a technique in which inspection of this kind is combined with systematic process analysis of the cases. Precisely because such research designs cover small numbers of cases, the researcher can investigate casual processes in each of them in detail, thereby assessing the relevant theories against especially diverse kinds of observations. … As a method, it is especially appropriate to the ontologies of comparative politics in recent years (397).

There are a considerable number of studies like Hall's that refer to the potential of case studies in developing causal inferences (for some well-discussed examples, see Gerring, 2004; Rueschemeyer, 2003; Mahoney, 2003). Although a case study can be employed in order to develop cause and effect relationships, the overall analysis of this study aimed to explore correlations rather than causal relationships. In other words, the main goal was first, to provide a description of the relationship between democratic accountability mechanisms and the protection of the rights of irregular immigrants. However, the analysis was not designed to suggest a direct causal mechanism between democratic accountability mechanisms and the protection of the rights of irregular immigrants. This was a consequence of the formulation of the main question of the research. In the analysis section, the main

questions posed ask "What kind of?" and "To what extent?" rather than "Why?"[19] This makes the answer more similar to a descriptive inference than a casual one.

On the other hand, the discussions derived from the case chapters, as explained in the analysis chapter, also seek to come close to forming a "probabilistic" casual argument; that is, an explanation in which "a cause increases the likelihood of an outcome and/or the magnitude of a (scalar) outcome" (Gerring, 2004: 349). In other words, the analyses made here did not aim to demonstrate invariant causal relationships in the sense of offering necessary and/or sufficient conditions; rather, I aimed to reveal those political mechanisms that increase the likelihood of the emergence of a particular policy orientation.[20] Therefore, I sought to develop my descriptive narrative and tried to link it to a possible causal mechanism. In doing so, I aimed to follow a sound observation of King, Keohane and Verba (1994): "Some scholars set out to describe the world; others to explain. Each is essential. We cannot construct meaningful causal explanations without good description; description, in turn, loses most of its interest unless linked to some causal relationships" (34). Furthermore, "[i]n fields such as comparative politics or international relations, descriptive work is particularly important because there is a great deal we still need to know, because our explanatory abilities are weak, and

[19] The research questions are formulated in the following manner: (1) Is there a divergence or convergence among Greece, Spain and Turkey in the way they treat irregular migrants in relation to the recognition of these migrants' fundamental human rights? (2) What is the role of democratic accountability mechanisms (i.e. civil society activism and judicial review) in the protection of rights of irregular immigrants who are already living within the receiving country? (3) To what extent do democratic accountability mechanisms at the national level (such as the activism of pro-migrant organizations, human rights groups, trade unions and other civil society organizations together with judicial review) impact on the treatment of irregular migrants - especially against a backdrop of 'Europeanization'?

[20] The substantive details of these arguments are discussed in more detail in the analysis chapter (chapter 8).

because good description depends in part on good explanation" (King, Keohane and Verba, 1994: 44).

4.1.1. Case Selection: Why compare these particular cases?

Lijphart (1971) defines comparable as "similar in a large number of important characteristics (variables) which one wants to treat as constants, but dissimilar as far as those variables are concerned which one wants to relate to each other" (687). If the cases are comparable then a comparative method can be more easily applied since the cases "allow the establishment of relationships among a few variables while many other variables are controlled" (687). Therefore, in a comparative case study, selection of the cases emerges as an important part of the methodology that requires careful consideration.

In this research, I aimed to compare select comparable cases, while also selecting those cases that present the most fruitful contexts in terms of offering different answers to the key questions of the research. However, the most important reason behind the case selection was that these countries demonstrate both certain similarities concerning some of the important contextual variables, but also diversities on other aspects that are significant while investigating the study's main research questions. I elaborate further on the major similarities and differences between the cases in the following paragraph.

The first similarity among the cases concerns the geographical area in which the countries are located: they are all southern European countries. Their geographical proximity also relates to their similar political significance in relation to the European Union's geography: Spain and Greece are member states at the

southern external frontiers of the European Union, while Turkey is a neighbouring candidate country on the EU's southeast borders. That is, all three countries mark the external borders of the European Union in some way. This characteristic gives them an important similar significance, and also pressures, in relation to migratory movements across the European continent. As a result of their geographical location, the countries are considered as the entrance points to the European continent and, more importantly, to the European Union. To put it in terms of the jargon of migration studies, their geographical locations make these countries all transit zones for immigrants heading for central and northern European countries. Such geographical proximity is important in migration studies as one can claim that they receive relatively similar types of flows, which are in this case transit migration flows. Along with transit migration, irregular immigration emerges as another defining characteristic of the region, as immigrants who seek to travel to central and Northern Europe stay in Greece, Spain and Turkey with irregular statuses, which further increases the number of irregular immigrants within these countries. Thus, as a consequence of their geographical position, transit and irregular immigration turn out to be defining characteristics of Greece, Spain and Turkey, when considering them in terms of migratory flows across the region. This means that the case studies reported here are investigating irregular immigration in three settings where it puts more or less similar pressures upon the states involved. In other words, this geographical proximity helped the study with increasing the three cases' comparability by providing more similarity.

Therefore, irregular immigration is a second similarity between the selected cases. Within Greece, Spain, and Turkey there are significant numbers of irregular

immigrants who work in the informal market. As a result, these countries experience problems associated with irregularity in the labour market as well. For example, Turkey attracts a certain number of irregular immigrants, most of whom use its territory as a transit zone to other European countries; during their waiting period in the country these immigrants work in "3D jobs" (dirty, dangerous and demeaning) in the informal sector. This situation creates problems first and foremost for the protection of the rights of the immigrants in general and irregular migrants in particular in the face of serious human rights violations against them. Additionally, it also creates problems for the state in terms of its territorial sovereignty and its management of immigration in general. This situation faced by all three countries investigated here. All three have developed various policies to manage irregular immigration. While most of which target the protection of the 'rights' of the state rather than the rights of the immigrants, they have also ranged from tolerance or benign neglect to regularization and deportation, which all affect the fundamental rights of irregular immigrants in various ways. This complex situation provided a rich empirical context for studying the major research questions of this research.

A third similarity among these countries concerns their very similar immigration histories in contrast to central and/or Northern European countries. Spain, Greece and Turkey have all been countries of emigration before also becoming countries of 'immigration'. Large numbers of Spanish and Greek people migrated to central and northern European countries as labour migrants in the post-war period, as did a considerable number of Turkish workers, who moved primarily to Germany in order to find jobs. As well as becoming emigration countries during a similar period, all three countries also became immigration countries at relatively

similar times. Spain and Greece became destination countries for immigration in the 1980s, while Turkey started to receive immigrants mainly from the 1990s onwards, becoming increasingly identified as a "transit" and "receiving" country in addition to its traditional role of being a "sending" country (Kirişçi, 2007: 91). Comparable immigration histories helped the research to control to a certain extent the contextual variables, which may also have an impact on the research topic under concern that is the protection of the rights of irregular immigrants.

As well as these three similarities, the three countries display divergences in certain characteristics that are particularly relevant to the main priorities of this research. First, divergences in the nature of the immigration policies each country creates a background, against which the main research question becomes more meaningful. In Greece, immigration policies are highly restrictive. To give a few examples, the 1991 immigration law made illegal migration an offence punishable by a jail sentence, while the 2000 immigration law severely restricts irregular migrants' access to public services such as health and education. The combination of such restrictive policies, laws and hostile public opinion in Greece creates a negative perception of immigrants in general and intolerance of irregular migrants in particular (Geddes, 2003).

In contrast, Spain shows striking differences on these matters compared to Greece. For example, in 1991, Spain officially accepted that it had become an immigration country, which led it to implement policies towards immigrants that are fairly liberal compared to those of other countries in the region. At the same time, there is also a certain degree of hostility towards immigrants in Spain as in Greece, although, unlike in Greece, Spain has a stronger "pro-migrant counter mobilization"

(Geddes, 2003: 164). For example, in 2000, leftist trade unions and pro-migrant NGOs mobilized in support of the regularization of irregular migrants. Again in contrast to Greece, Spain granted irregular migrants and their children access to health and education services, and granted certain political rights that enable union membership and mobilization (Geddes, 2003).[21] All these are clarified in detail in case chapters 5, and 6.

Turkey, also exhibits certain differences to the other two countries concerning immigration policy. Legal immigration to Turkey was limited to ethnic Turks until the 1980s. The Law of Settlement (1934) lists the main rules of immigration to Turkey. The law primarily considers the movement of ethnic Turks, and as a result favours Turkish ethnicity and culture, while rules governing the permanent settlement of foreigners are more restrictive. On the other hand, when it comes to visa policy, Turkish policies are fairly liberal (İçduygu, 2007A: 206). However, Turkey's immigration policies have recently been revised, both because of its growing role as an immigration and transit country, and also as a result of the EU accession process. In particular, the European integration imposed by the 'conditionality' of the accession process, has had a significant influence on migration policy-making in Turkey (İçduygu, 2007A). This has led policies on immigration in general, and on irregular immigration in particular, to experience a process of revision under the influence of both the European Union and Turkish national interests. To conclude, the three cases display important differences in terms of the way in which the rights of immigrants are protected within their jurisdictions; this situation provided a fruitful basis for analysing this study's main research questions.

[21] However, these political rights were later revoked as a result of pressure exerted by right-wing political parties.

4.2. Data Collection

In this study, I utilized qualitative research techniques, in-depth interviewing, together with an analysis of related policy documents (e.g. immigration related laws and regulations, policy reports by civil society and international organizations). The research focuses on the last immigration regulations of Greece, Spain and Turkey until the end of 2010. However, it also covers supporting evidence from documents and interviews that relate to the last decade.

According to Ritchie (2003), qualitative data can be divided into two broad categories: "naturally occurring data" and "generated data". In the former case, data is collected in its natural setting without the intervention of the researcher in its creation. In other words, such data "is an 'enactment' of social behaviour in its social setting, rather than a 'recounting' of it generated specifically for the research study" (Ritchie, 2003: 34). Documentary analysis, participant observation, discourse analysis and conversation analysis are all considered as methods for collecting naturally occurring data. In contrast, generated data means to 'reconstruct', 're-tell' and/or 're-process' certain ideas, attitudes, beliefs, behaviours with the goal of generating data that fits with the goals of the research. Some methods used to generate data are biographical methods, focus groups and interviews (Ritchie, 2003: 36-37). The data collected in this research included both "naturally occurring data," as I analysed documents, and also "generated data," as I conducted in-depth interviews.

4.2.1. Interviews

According to Weiss (1994), "[i]nterviewing gives us access to observation of

others. Through interviewing we can learn about places we have not been and could not go and about settings in which we have not lived" (1). This description, although very simple, very accurately explains why social sciences employ interviewing as a technique to collect data. In this particular study too, I employed interviewing as a research technique in order to learn more about political environments and settings "that would otherwise be closed" (Weiss, 1994: 1) to me. More specifically, I employed in-depth interviewing, or "qualitative interviewing" in Weiss' terms. One of the key reasons for using qualitative interviewing is for "developing detailed descriptions" of an event, a process or a development, or "integrating multiple perspectives" on an organization, an event or a development (Weiss, 1994: 9). These functions of qualitative interviewing perfectly fitted with the goals of my research, namely to gain a fuller picture of the management of irregular immigration in three cases, and to explain how democratic accountability mechanisms interact with the problem of protecting irregular immigrants' rights. I therefore conducted in-depth interviews, for all three cases, with experts of immigration in general and irregular immigration in particular in order to acquire detailed descriptions, and various accounts of the irregular immigration policy-making process and the official treatment of irregular immigrants. This allowed me to develop my own explanation of the subject by integrating these various perspectives. The precise form of interviews I conducted can be categorized further as "elite interviewing", a type of interview conducted with interviewees "considered to be influential, prominent, and/or well-informed … in an organization or community; they are selected for interviews on the basis of their expertise in areas relevant to the research" (Marshall and Rossman, 1999: 113).

To further elaborate on the respondents that I interviewed, I can refer to Weiss's study once more. Weiss (1994) distinguishes two distinct sets of respondents in interviewing: respondents who provide information from their being experts in an area or witnesses to an event; and respondents who reflect or represent the shared or general experiences of a group that is affected by a certain development. The group of respondents I worked with belong to the former category. Weiss describes well the value of such respondents to a research project like the one reported here:

> Suppose the aim of our study is to describe an event or development or institution: the management of a political convention, the operation of a nursing service, or the system governing the granting of divorce. We would do best to interview people who are especially knowledgeable or experienced. To enrich or extend our understanding, we might also want to include as respondents people who view our topic from different perspectives or who know different aspects of it. Our aim would be to develop a wide-ranging *panel of knowledgeable informants* [author's italics]. Each member of the panel would be chosen because he or she could significantly instruct us (Weiss, 1994: 17).

As the goal of my research was first to understand and describe the official treatment of irregular immigrants within the country and how the system of protecting their rights operates within the framework of immigration policy-making in general, the views of the respondents who were informants through their expertise constituted the main source of knowledge in this research. Through this information I also sought to analyse the possible contributions of democratic accountability mechanisms to the system protecting the rights of irregular immigrants. More specifically, I sought to arrange interviews with immigration experts who were working either within the civil society as members and activists of various organizations, or in official posts as policy practitioners. It turned out to be difficult to reach the latter group[22] so instead I included researchers and scholars working or

[22] I was only able to arrange an interview with an expert from the Secretary of State for Immigration and Emigration in Spain. In Turkey, I also arranged an interview with an expert and researcher from

studying on immigration related issues, in order to widen the range of perspectives. According to Weiss, a panel of informants should also include people who are studying the particular social institution that the research is carried out in order to provide greater knowledge about different forms of the institution concerned (Weiss, 1994: 20).

In the end, I chose the majority of the respondents specifically from among the members of civil society organizations, since one of the major goals of this research was to depict the nature of the relationship between civil society organizations and state regulation relating to the protection of irregular immigrants' rights. Therefore, I sought to acquire as much inside information on civil society participation as possible. In order to gain a more accurate and complete picture of the relationship, I selected the informants from diverse institutions of civil society, such as human rights organizations, migrants' organizations, international organizations, and trade unions. Another important reason for including researchers and prominent scholars working on irregular immigration as respondents was the need to balance the dominance of views from civil society organizations as the main source of information with information provided by scholars and researchers. In other words, by interviewing scholars and researchers, I sought to avoid any possible biases about the significance of civil society participation that can emerge while interviewing civil society members. Thus, including scholars and researchers allowed for a fuller, more diversified and representative account of the main topics of inquiry. A mapping of the respondents' organizations or institutions is provided in Appendix B.

As Kvale (1996) suggests, a qualitative research interview tends to be semi-structured, as is the case in this study. That is, "it is neither an open conversation nor

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the Police Academy. Except for these interviews, this research, in its current form, is not representative of the views of experts from governmental offices.

a highly structured questionnaire. It is conducted according to an interview guide that focuses on certain themes and that may include suggested questions" (Kvale, 1996: 27). The main goal of the interviews with the respondents selected for this study was to collect information on the key research questions concerning the relationship between democratic accountability mechanisms and state regulation concerning the rights of irregular immigrants. To achieve this, the interview plan included a discussion of the overall picture of immigration politics and policy-making, followed by various questions about topics ranging from the policies adopted towards irregular immigrants to the nature of the immigration policy-making process. For example, I asked the respondents to describe the immigration policy-making process by referring to the actors involved in the process. I also asked the respondents to discuss how authorities manage or treat the issue of irregular immigration, and which rights irregular immigrants enjoy in the country concerned. I then encouraged discussion on the ways in which civil society organizations participate or intervene in matters concerning both the rights of irregular immigrants in particular, and other immigration related matters in general. The interview plan also included questions concerning the role of judicial activism in this matter, and whether the judiciary is influential or not in matters concerning the rights of irregular immigrants. Appendix A presents the interview question schedule, although in use the questions were revised slightly according to the specific circumstances of each country. The interviews took approximately 45 to 60 minutes each.

4.2.2. Notes on the field research

The field research in Greece was conducted in Athens between February 22

and March 5, 2010; the Spanish field research was conducted in Madrid between April 12 and 23, 2010. The planning of the Turkish field research was more flexible as I am a permanent resident so interviews could be scheduled across a longer time period. I conducted interviews first in Istanbul between June 7 and 11, 2010, and then in Ankara between June 21 and 25, 2010. Interviews that could not be arranged during that time were rescheduled for various days in July 2010, both in Ankara and Istanbul; I also continued to make new interviews as I proceeded with the analysis of the results. For example, I conducted new interviews in both Ankara and İzmir in April 2011.

I adopted a mixed strategy while identifying the respondents for the interviews. First, I carried out a broad internet search in order to identify all the experts working on both immigration and irregular immigration. I corresponded with the most relevant institutions via e-mail and telephone, asking for experts on irregular migration, and then contacted these individuals for interviews. At the same time, I also contacted researchers working specifically on irregular immigration in certain research centres in Athens and Madrid. I extended my research cooperation with these individuals in order to identify other possible contacts that I might have missed during the internet search. The researchers whom I contacted during the field research generously offered their help in securing further interviews and collecting research material. In addition to an internet search, while I was conducting the interviews in Greece, Madrid, Ankara and Istanbul, I also employed the snow-ball method. That is, I asked the respondents to name other key experts that they recommended for further interviews. This strategy was used to complement the previous strategy (internet search and recommendations by the affiliates during the

field research). One disadvantage of relying solely on the snow-ball method is that it might only yield informants of largely similar perspectives because of informants' recommending others within the same circles. Thus, in order to obtain as diverse a set of perspectives as possible, I tried to give preference to those respondents suggested by the results of the internet searches and by the recommendations of other researchers.

One concern while selecting the respondents was to select organizations and people that would be more or less comparable across all three cases. Before conducting an interview in one country, I tried to determine whether or not I would be able to interview equivalent experts with more or less similar organizational backgrounds in the other two countries as well. As I only had a very limited time in Greece and Spain for conducting field research, I had to be rather careful about whether or not interviews would be comparable. For example, if I interviewed an expert from an international organization in one case, I sought to arrange an interview in an international organization with possibly similar functions in the two other cases as well. More specifically, in each case, I tried to arrange interviews with experts from trade unions, international organizations, international non-governmental organizations, and other non-governmental organizations, namely human rights organizations, aid organizations, and migrant organizations. However, there were also three particular respondents whose institution or organization was not comparable across all the cases; I interviewed them nevertheless since I judged that they were important informants on the topic for that specific country. First, in Greece and Spain, I interviewed experts from the Ombudsman's office since they are significant actors in migration policy-making in these two countries. However, it was

not possible to find the equivalent interviewee in Turkey, since Turkey did not have a functioning Ombudsman office during the period of the field research. Second, in the Turkish case, I could not arrange any interviews with members of trade unions or migrant organizations since the latter are almost non-existent in Turkey while the former have not yet developed a working agenda on immigration comparable to those in Greece or Spain. Third, I was only able to arrange an interview with an official expert from the Secretary of State for Immigration and Emigration in Spain, and an interview in Turkey with an expert working in the Police Academy.

There were certain informants that I was unable to reach, although I had planned to conduct interviews with them to ensure a broad range of informants. For example, although migrant organizations are influential actors in immigration politics in Spain, I was unable to interview an expert from any Spanish migrant organizations. One person had originally agreed to provide written responses to interview questions, but in the end failed to respond to repeated attempts to contact them.

The interviews in Greece and Spain were mostly conducted in English although it was necessary to arrange for an interpreter in a few cases as the respondents did not speak English.

4.2.3. Documentary Analysis of Policy Texts

Another method employed in this research was documentary analysis of policy texts, including immigration related laws and regulations, and reports by civil society and international organizations. As already outlined at the beginning of this section on data collection, documentary analysis is a qualitative research method

through which "naturally occurring data" is collected. In other words, data is not re-generated by the intervention of the researcher, but it is already out there. Through documentary analysis, researchers study already existing texts with the aim to either understand the texts' "substantive content" or to interpret "deeper meanings" (Ritchie, 2003: 35). In this study, policy documents were analysed with the former goal in mind, i.e. to understand the particular policy orientation or attitude towards the protection of rights of irregular immigrants expressed through the document. The texts utilised in a documentary analysis can be public or personal. Public documents may include texts such as media reports, government papers, minutes of meetings or formal letters, whereas personal documents can include diaries, letters or photographs. In this research, I analysed public documents, specifically immigration laws, governmental decrees, reports from civil society organisations and the Ombudsman (for Greece and Spain). A listing of the legal documents utilized in the research is available in Appendix C.

Mason (2003) offers the following categorisation of the different motivations behind the use of documentary analysis:

> [I]f you choose to use documents … you may have an ontological position which suggests that written words, texts, documents, records … are meaningful constituents of the social world in themselves … or you may believe that they act as some form of expression or representation of relevant elements of the social world, or that I can trace or 'read' aspects of the social world through them (Mason, 2003: 106).

The motivational perspective I adopted in this study was that the documents I analysed constitute a relevant material element of the social world in which I am interested. I defined this social world as the "official state level", which has a particular reaction or reflex to the fact that irregular immigrants are individuals who

naturally have (or should have) certain social rights. Thus, I utilised document analysis in order to collect data on the dependent variable of the research, i.e., the degree of state regulation of the protection of irregular immigrants' rights, or the liberalness of the state's treatment of irregular migrants with respect to their fundamental social rights. Through analysis of the documents, I "traced" this official attitude towards irregular immigrants. More specifically, as I was looking for rights granted on paper; I selected 'papers' on that topic for my analysis in order to depict the formal picture of the conditions of irregular immigrants' rights through the information existing (or not) within the documents relating to the fundamental social rights of irregular migrants.

4.3. Concluding Remarks

Research reported in this study asked the following question: What kind of role do democratic accountability mechanisms play in the protection of the rights of irregular immigrants who are already living within the receiving country? Answering this question entailed investigating the relationship between democratic accountability mechanisms and the protection of certain rights, such as access to free health care and education for irregular immigrants. The method employed to answer this question was a comparative case study, involving Greek, Spanish and Turkish settings so as to both observe common patterns between them and to explain the relationship between protection of irregular immigrants' rights and democratic accountability mechanisms. However, this study also aimed to explain differences between the cases as well. This study used in-depth interviewing and documentary analysis techniques to collect the data needed to answer the study's research

question. Determining the extent to which the immigrants' rights are protected relied mainly on the analysis of policy documents, while the analysis of the democratic accountability mechanisms operating in relation to the protection of immigrants' rights was based on the information gathered from the in-depth interviews. In the following three chapters, I analyse the cases of Greece, Spain and Turkey within the methodological framework set out in this chapter.

CHAPTER 5

GREECE

5.1. History of Immigration in Greece

Similar to other Southern European countries, Greece was a country of emigration until the late 1960s and the early 1970s. Between 1945 and 1973, approximately a million Greeks left for countries such as West Germany, the United States, Canada and Australia, for various economic, family or political reasons. Emigration started to decrease in the mid-1970s, and there was a period of return migration between 1974 and 1985. Towards the end of this period, emigration and repatriation figures fell to insignificant levels, bringing the net migration rate closer to zero (Fakiolas, 2000: 58).

Immigration to Greece was also taking place alongside emigration, but on a rather smaller scale. Post-war immigrants came mainly as refugees from the then Socialist countries of Eastern Europe. Later on, in the late 1960s, Greece started to receive unskilled labour immigrants as seasonal workers from Spain, Egypt and South Asian countries in response to a demand for immigrant labour in agriculture, industry and domestic service (Fakiolas, 2000). In the 1970s, refugees started to arrive from countries such as Lebanon, Vietnam and Middle Eastern countries, and,

after 1985, in large numbers from Eastern European countries (Baldwin-Edwards, 2009: 41). Especially in the late 1980s and the early 1990s, Greece faced an unexpected immigration influx mainly from neighbouring countries. For example, Albanian immigration in the early 1990s was one of the main markers of Greece's new status as an immigration country. For Albanian families, emigration during that time was the "single most important means of survival" (Lazaridis and Koumandraki, 2007: 92). In the 1990s, the number of economic migrants and asylum seekers from the Middle East and certain Asian and African countries also started to grow (Maroukis, 2009: 5). As a result of these various developments, "[t]he situation changed dramatically in the early 1990s, due above all to the rapid influx of immigrants from Albania. Greece quickly became transformed from a traditional emigration country into one of mass immigration from the former socialist countries and the developing world, despite about 1.3 million deportations (mainly of Albanians) since 1991" (Fakiolas, 2000: 59). Up until the first regularisation program of 1998, a large majority of the incoming migrants had no papers, and hence were working irregularly (Kanellopoulos et. al., 2006: 13).

The reasons for such a transformation, from a country of emigration to immigration, were more or less the same in Greece as in other southern European countries. On the one hand, there was a demand for unskilled labour power in certain sectors of the economy in these countries, so immigrant workers could be accommodated in these sectors. On the other hand, Northern European countries had started to adopt increasingly restrictive policies on immigration, which re-shaped the migratory routes so that immigrants heading towards Northern European countries changed their routes towards Southern European countries, either for transit purposes

or for permanent settlement (Tsoukala, 1999). Developments in neighbouring former Socialist countries also affected to a great extent the immigration movements across Greek territory, which in turn changed the composition of the migrant population in Greece. Albanians emerged as the largest migrant group, representing more than 50 per cent of the total migrant population. Today, after Albanians, Poles, Bulgarians and Romanians constitute the largest immigrant groups in Greece (Maroukis, 2009).

Table 1: Migration Related Statistical Information on Greece

Population (2010)	11.2 million
Net Migration Rate[23] (2005-2010)	2.7 migrants/1,000 population
Immigrants as a percentage of the population (2010)	10.1 %
Number of asylum seekers (2009)	15,930
Estimates of the number of irregular foreign residents (2008)	172,000 (minimum estimate) 209,000 (maximum estimate)
Number of apprehended irregular migrants (2008)	57,623

Source: The data in this table was produced from multiple secondary sources: the figures in the first three rows were gathered from the International Organization for Migration (IOM) data (available at http://www.iom.int/jahia/Jahia/activities/europe/southern-europe/greece, retrieved on 07.10.10). The data on the number of asylum seekers comes from OECD-International Migration Data 2010 (available at http://www.oecd.org/document/57/0,3343,en_2649_33931_45634233_1_1_1_37415,00.html, retrieved on 07.10.10). Estimates of the number of irregular foreign residents data is from Kovacheva and Vogel's (2009) study, which reports the results of the 'CLANDESTINO: Counting the uncountable – data and trends across Europe' project (2007-2009), which is funded by the European Commission, DG Research, Sixth Framework Programme. Finally, the number of apprehended irregular migrants is taken from Maroukis (2009), which is also a report of the CLANDESTINO project.

[23] IOM defines the net migration rate as "[t]he difference between the number of persons entering and leaving a country during the year per 1,000 persons. An excess of persons entering the country is referred to as net immigration (e.g., 3.56 migrants/1,000 population); an excess of persons leaving the country is referred to as net emigration (e.g., -9.26 migrants/1,000 population)." Retrieved July 23, 2010 from http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/activities/countries/sources/source_turkey.htm

Table 1 above provides some migration related figures and statistics for Greece, which can contribute to our understanding of the context of irregular immigration. Immigrants constitute a very large portion of the Greek population, and net migration rate, which is the difference between incoming immigrants and outgoing emigrant, is also rather high. All these figures support the fact that Greece has become an immigration country. Looking at the number of rather high asylum seekers in Greece is also important for trying to understand the volume of irregular immigrants within the country because those whose asylum applications have been either rejected or remain uncompleted for a long time may decide to stay and/or work irregularly in the country. For example, when large numbers of Eastern Europeans arrived as asylum seekers in 1985, Greece did not grant them work permits and housed them in camps and hotel rooms while they waited to be transferred to another country. However, as their stay became prolonged, many of these asylum seekers began working in the informal economy, thereby adding to the volume of irregular foreign workers in Greece (Baldwin-Edwards, 2009).

The link between irregular migration and the asylum process requires more attention in Greece since the distinction between an asylum seeker and an irregular immigrant is rather blurred in this country. That is, just as there are rejected asylum seekers who continue to stay as undocumented immigrants, there are also asylum seekers who do not apply for asylum in Greece, but rather prefer to stay undocumented until they can move on to another European country where they have a greater chance of being granted refugee status. The regulations of Dublin II Convention contribute a lot to this situation in Greece. According to the Dublin II regulation, an asylum application must be processed in the country where the asylum

seeker first entered European territory. Therefore, if an asylum seeker first enters European territory through Greece, whether legally or illegally, his/her application must be processed in Greece, even if he or she has subsequently moved to another European country. That is, Greece is "obliged to take back its applicants who are found to enter or reside irregularly in another member state. This is a major reason why refugees would rather not lodge an asylum application in Greece but wait in order to make their claim in another member state, where chances for obtaining asylum may be higher" (Papadopoulou-Kourkoula, 2008: 6). In other words, there are cases in which asylum seekers choose to remain underground, avoid any contact with the authorities and hence seek to conceal that they had entered the European territory through Greece while they look for better prospects from applying for asylum in another member state.

The way in which Greece handles the asylum system also affects the decision of asylum seekers a lot in such cases. Specifically, its asylum system contains multiple flaws, such as the lack of proper information about procedures and about asylum seekers' rights; lack of interpretation and interpreters; lack of access to sufficient legal aid; the extremely poor conditions in most of the reception centres; low rates of recognition of refugee status; and very long processes (Papadopoulou-Kourkoula, 2008: 5). In 2008, the Norwegian Immigration Appeal Board stopped the return of asylum seekers to Greece under the Dublin II Convention since the Board feared that the protection of the rights of refugees was not guaranteed and that reception conditions were extremely poor (Papadopoulou-Kourkoula, 2008: 6). Similarly, again in 2008, a court in Sweden prevented the deportation of an asylum seeker from Iraq, who had been found to entered through Greece, on the grounds that

"his access to a fair hearing could not be guaranteed" in Greece (Papadopoulou-Kourkoula, 2008: 6). Such cases illustrate how the processes of asylum seeking in Greece contribute a lot to the blurredness between the statuses of asylum seeker and irregular migrant, while also highlighting how these categories emerge as a result of the way in which states (mis)treat and (mis)manage foreigners. In Greece, the way in which the implementation of the asylum system interacts with the provisions of the Dublin II regulation create a distinct irregular migrant population of its own because asylum seekers in Greece choose to remain undocumented because of the previously mentioned flaws of its asylum system.

Table 1 provides us with approximate figures for the irregular migrant population. However, one should be very cautious with these figures, as it is almost impossible to be more exact because of the clandestine and undocumented nature of this type of immigration. Thus different sources estimate differing population sizes from basing their estimations on different 'evidence'. One piece of evidence shown in Table 1 from which to estimate the population size of irregular immigrant residents is the number of apprehended irregular immigrants. Table 2 below provides a breakdown of the number of apprehended irregular migrants at land and sea borders, or within Greek territory from 2000 to 2008. It shows how the number of apprehended irregular migrants decreased a lot until 2002 before increasing again in 2006 and 2007. Although knowing the number of apprehended irregular migrants can provide some evidence about the actual total volume of irregular migratory flows into a country, one cannot be sure if any increase or decrease in the apprehensions is due to a change in the numbers of migrants trying to cross borders illegally or border control measures are having more success. Despite these uncertainties, the numbers

do suggest the presence of an important volume of irregular immigrants in Greece.

Table 2: Number of apprehended irregular immigrants in Greece between 2000 and 2008

YEARS	**TOTAL APPREHENSIONS (land, dea and in the mainland)**
2000	228,421
2001	192,144
2002	50,161
2003	51,031
2004	44,987
2005	66,351
2006	95,239
2007	112,364
2008 (1st half)	57,623

Source: The data in this table is a partial copy from Table 15 'Totals of apprehended irregular migrants', from Maroukis (2009; 70).

As already mentioned, in the 1990s, Albanians formed the largest group of irregular migrant workers, while Bulgarians, Ukrainians and Romanians also became a significant proportion at the beginning of the 21st century. In addition, in contrast to earlier periods, by the 2000s, migrants from Asian, Middle Eastern and African countries also constituted a significant share of this population (Maroukis, 2009: 23). More specifically, a 2004 report of the Ministry of Public Order determined that a large majority of irregular migrants came from Albania, Bulgaria, Romania, Afghanistan, Iraq, FRYOM, Pakistan, Georgia, Egypt and Palestine (Kanellopoulos et al., 2006: 54), while the Greek Ministry of Mercantile Marine listed the nationalities of migrants apprehended at Greek sea borders in 2007, in descending order, as Afghan, Iraqi, Palestinian, Somali and Egyptian (Maroukis, 2009: 23).

As is common in other immigration settings, irregular migrants in Greece are employed mainly in the informal sector, where they perform unskilled and labour-

intensive work. Information gathered from regularisation programs indicate that irregular migrants usually work in construction, domestic care, agriculture, repair works, tourism, catering, and peddling (Kanellopoulos et al., 2006). According to a labour force survey conducted in the early 2000s, irregular migrants working in the domestic care work constitute the largest percentage (31.3 percent), followed by the construction sector (with 29.32 percent). In contrast, only 13.9 percent of the migrants with legal documentation, and just 0.54 percent of native Greek citizens, work in domestic care. In construction, almost the same proportion of migrants with valid documentation work in this sector (28.51 percent), whereas only 6.91 percent of native Greek citizens do so (Kanellopoulos et al., 2006: 80-81). In some cases, Greece is not the final destination, but merely a transit country for irregular migrants who are heading to Northern European countries. However, there is also a group of migrants who have been served with a deportation order by the Greek authorities, who add to the existing migrant population in Athens who work in the informal market.

Greece's borders are difficult to effectively monitor for migratory movements. As Kenellopoulos et al. (2006: 51) put it, "Greek territory, in particular, includes a vast coastline (approximately 16,000 km) and a multitude of greater or lesser islands and rocky islets (over 3,000), the majority of which lie close to the Turkish coast, so they constitute the "gate of entrance" of thousands of immigrants and refugees into Europe annually". Consequently, clandestine entry constitutes a significant part of irregular migration into Greece. For example, during the 1990s, many migrants, most of whom were Albanians, entered clandestinely on foot across the mountainous Greece-Albania border (Maroukis, 2009: 20), while the land and sea

borders with Bulgaria, FYROM and Turkey were the other frequently used clandestine entry points. The border between Greece and Turkey, particularly the many Greek islands (such as Samos, Chios and Leros) lying between the two countries' mainlands, attracted a lot of attention as clandestine entry points (Maroukis, 2009: 20).

5.2. A brief overview of Immigration Policies of Greece

The welfare services offered to non-European immigrants are rather less developed in Greece when compared to other European states (Ribas-Mateos, 2005). In relation to that, Ribas-Mateos (2005) even argues that "the analysis of new immigration flows demonstrates that they constitute one of the clearest expressions of social inequality in the context of the European Union. This is particularly true in the case of Greece" (Ribas-Mateos, 2005: 41-2). According to the Migrant Integration Policy Index, Greece ranks 16th among 31 migrant receiving countries, in terms of best practiced on integration policies, such as anti-discrimination, political participation and labour market access (MIPEX, 2011). For example, Greece does not have any provisions regarding the education of immigrants, and when it comes to immigrant children they cannot receive their grades unless they provide residence permits or birth certificates (Petronoti, 2001: 52). Regarding labour market integration, Albanians, one of the largest immigrant groups, mostly work in the informal sector under poor working conditions and with low wages (Lazaridis, 2004). In short, the integration of immigrants into Greek society is mostly problematic. As Petronoti (2001: 55) describes the situation, "[e]xisting laws do not encourage their mobilization, no initiatives are developed by the state regarding self-

determination, officials only provide ad hoc solutions and there is lack of institutional means for confronting ethnic demands".

The first immigration law of 1991 mainly aimed at controlling inflows by imposing strict measures in line with the Schengen priorities (Triandafyllidou, 2000A). Both the entry and residence of labour immigrants were made almost impracticable, and it disregarded the presence of large numbers of immigrants in the country; instead it concentrated on restricting further immigration (Triandafyllidou, 2009). Thus, since the 1990s, Greece has strengthened its border control mechanisms. For example, cooperation between the different police departments that manage controls on the land, sea and air borders has been enhanced. The state has also established 58 different departments of border guards. In addition to controls on the borders, inspection within Greek territory has been increased and intensified as well. Sanctions on those who employ or provide any assistance in general (such as housing) to irregular migrants have been made heavier. Police have the authority to check the immigration status of immigrants on the streets and to make arrests when necessary (Kanellopoulos et al., 2006: 15). In the first half of 2009, the Greek government started a large scale operation of arresting and, when possible, deporting irregular immigrants. These operations have taken place in various public places, such as metro stations, squares and inner-city neighbourhoods. These operations led to, 28,350 irregular immigrants being arrested and deported from Greek territory in the first six months of 2009 (Triandafyllidou, 2010: 2). Overall, the state has developed strict control measures for incoming immigration, but without addressing in a systematic manner the settlement of incoming immigrants (Petronoti, 2001). For example, the 1991 law included rather restrictive provisions regarding family

reunification rights and labour market integration. Specifically, family unification rights were only granted to those who have been living in Greece at least for five years, while work permits were only granted for a specific job category in a specific place with a specific employer. If any of these conditions changed, the permit became invalid (Tsoukala, 1999). Petronoti (2001) summarizes the situation of immigrants in Greece at the beginning of the 2000s in the following manner:

> [I]mmigrants accommodate themselves without any help from the state. … Neither birth in Greece nor marriage to Greeks automatically entitles a person to citizenship; so few immigrants have citizenship rights that they are analytically irrelevant (45).

The restrictive tone which emerged with the 1991 law did, however, soften a little as of 2001. Political parties on both the right and left of the political spectrum realized the problems immigrants encountered and, began to include measures in their party programs relating to regularisation, immigrant workers' rights, naturalization, and integration in general (Triandafyllidou, 2009). Likewise, the 2001 immigration law was not only concerned with border control measures but also had provisions relating to labour immigration, family reunion, return migration of ethnic Greeks, immigration for purposes of study, and asylum seeking (Triandafyllidou, 2009). Nevertheless, during this period, the two major political parties, the Socialists and the Conservatives, still adopted and supported similarly restrictive and reactionary policies while in power (Triandafyllidou, 2009). The law adopted in 2005 (3386/2005) also did not very much alter the restrictive tendencies of Greece's immigration policy, as its main goal was to incorporate the EU *acquis* on immigration and asylum, rather than to reform the conditions of immigrant integration.

Geddes (2003) argues that these restrictive immigration policies have opened up lots of space for irregularities in migratory movements across Greece. Because official routes to enter Greece are either "malfunctioning" or "hardened" most immigrants enter Greece illegally (Maroukis, 2009: 13). For example, entering Greece with a visa for dependent work purposes, *metaklisi*[24], requires a very lengthy and thoroughly bureaucratic process, which starts with an employer applying to his or her municipality to invite a foreign worker. The application then goes through various cross-checks and reports in a variety of bureaucracies, such as the Organization for the Employment of the Labour Force, the Regional Directorate of Foreigners and Immigration, the Ministry of Employment and Social Protection, Greek consular authorities abroad, and so on. Research into this issue indicates, unsurprisingly, that few employers prefer to hire immigrants through this procedure; instead they hire from among immigrants who are already in the country, which, contrary to the intention of the legislation, encourages immigrants in the Greek labour market to take on an irregular status. Additionally, delays in the *metaklisi* process have the potential to harm Greece's economic activity, especially in the tourism and agricultural sectors, where fluctuating demand for workers requires immediate flexible supply of labour (Maroukis, 2009).

On the other hand, Greek immigration law is relatively more favourable towards co-ethnics. For example, after 1989, and especially in 1993, ethnic Greeks began returning from the former Soviet bloc. In order to facilitate the arrival of these repatriates and their naturalisation, various laws were enacted (Baldwin-Edwards 2009; 41). For example, an significant proportion of Albanians in Greece are co-ethnics and identify themselves as Greeks, and they hold an identification card called

[24] Maroukis (2009) provides a brief but comprehensive explanation of *metaklisi*.

EDTO, which is called the Special Identity Card for *Omogeneis* (co-ethnics). EDTO holders are relatively more privileged than other immigrant groups as they are only required to renew their permit every three years instead of each year (Maroukis, 2009). However, they are not privileged as much as Pontic Greeks, who are the co-ethnic returnees from the ex-Soviet countries (Maroukis, 2009).

Regularisation of the status of irregular immigrants is another important policy tool for immigration management in the Greek context. The first regularisation in Greece was implemented in 1998 following legislation in 1997. Three more regularisation programmes were approved in 2001, 2005 and 2007. The first regularisation of 1997 was not a response to a popular movement but it rather emerged as "an emergency measure or admission of policy failure" (Baldwin-Edwards, 2009: 42) because, although there had been massive expulsions of irregular immigrants, large-scale immigration could not be prevented, and thus a need for regularisation emerged. Unfortunately, however, the design of the regularisation programme created a bureaucratic mess, both for the state itself and for immigrant applicants. For example, among other documents, immigrant applicants were asked to provide a certificate of health from a Greek state hospital and a criminal record from the Ministry of Justice. However, the lack of communication between the relevant ministries created massive delays. As a result, the deadline for the application had to be extended three times. "These extensions were necessitated entirely through the inability of the Greek state to produce appropriate documentation as it had obliged itself to do" (Baldwin-Edwards, 2009: 46). Additionally, in another requirement, Greek was the only language used in information and application forms, which made things very difficult for many

applicants. Newspapers, and various civil society organizations, had to come to the help of the immigrants in the process (Baldwin-Edwards, 2009). Subsequent regularisations entailed similarly challenging bureaucratic contradictions and impossibilities. According to Baldwin-Edwards (2009: 52), the 2001 regularisation was characterized by the "lack of planning of any sort", which was not unexpected given that it had been prepared in only five working days as a result of public pressure. As for the 2005 regularisation, similar Kafkaesque bureaucratic contradictions occurred. For example, for the regularisation of those irregular immigrants who had held a permit, the state required, among other documents, the provision of a VAT number and a certificate of a social security institution. However, in order to receive a social security certificate, the immigrant had to be registered for tax, but in order to have a tax registration, the immigrant had to have a residence permit. That is to say, immigrants had to have a residence permit at one point in order to apply for regularisation, although the stated objective of that provision was to legalize immigrants who had never held a residence permit (Baldwin-Edwards, 2009: 54). As a final example, during the 2007 regularisation, immigrants could buy their own social insurance stamps (although this was in fact the duty of the employer). Yet, although the legislation allowed immigrants to buy them, "the social insurance agencies refused to allow immigrants to purchase social insurance stamps on the grounds that they had not been informed of the Law" (Baldwin-Edwards, 2009: 60). In short, regularisations in Greece have not been very promising, either for the state itself or for the irregular immigrants. Baldwin-Edwards (2009) describes the Greek regularisation processes as situations within which

> neither the state nor the immigrants have much idea of how to manage the situation. The result is an overburdened state and immigrant applicants left in limbo, which is greatly to the benefit of lawyers, mafia operators and corrupt state officials (62).

Taken as a whole, it might be concluded that Greek immigration policies have a rather restrictive mode. The goal of the policies have mainly prioritized the defence of the state's 'security' and the welfare of Greek citizens in the first place, instead of establishing a framework that protects and guarantees the interests of immigrants (Petronoti, 2001: 41).

5.3. Irregular Immigration Policies and Rights of 'Irregulars' in Greece

In Greece, there is more than one pathway leading to the status of being an irregular immigrant. First, there are immigrants who have crossed the borders clandestinely. Second, there are those who have entered in compliance with existing visa requirements, for example by obtaining a tourist visa, but have overstayed their visa by continuing to stay in Greece instead of leaving. Third, there are those who were once asylum seekers but whose applications have been rejected, most of whom also continue to stay in the country as irregular immigrants. Finally, there are those who had previously regularized their status through regularisation programs but whose immigration status has somehow fallen back into 'illegality' (Maroukis, 2009).

The 1991 immigration law made irregular immigration an offence punishable by a jail sentence (Geddes, 2003), and according to Law 3386/2005 (article 83, para.1), illegal border crossing is still an imprisonable offense:

> Third-country nationals who exit or attempt to exit Greece or enter or attempt to enter Greece without legal formalities shall be punished by imprisonment of at least three months and a fine of at least EUR one thousand five hundred

(€1,500).

The same article also opens the way for an immediate repatriation of the offender, or detention and deportation if immediate return is not possible. Law 3386/2006 allows detention to continue until deportation, unless this period exceeds 6 months. However,

> [i]f deportation is delayed because the alien refuses to cooperate or the documents necessary for his deportation are not sent timely from the home country or the country of origin of the alien, his detention may be extended for a limited time which cannot exceed twelve (12) months (para.3, article 76).

Although this is how the law outlines the measures related to detention and expulsion, in practice

> [i]n most of the cases deportation is not concluded neither within the period of detention nor afterwards. Then the irregular immigrant is released and receives an order to leave the country within a period of a month (Spathana, 2009: 3).

Thus, many irregular immigrants who have been issued with a deportation order add to Greece's irregular immigrant population. What happens to these immigrants if they do not leave the country is an important and worrying question, as it is unclear how they can satisfy their basic needs, such as shelter, work or health. It is also unclear to what extent the system recognises them as persons who are eligible for basic human rights.

The 2000 immigration law created a situation in which irregular immigrants had very limited access to public services, such as health and education (Geddes, 2003). In fact, Law 3386/2005 (article 71, para.1) states that "[t]hird-country nationals legally residing in Greece shall be insured with the relevant insurance organizations and all have the same insurance rights as Greek nationals". Law 2910/2001 also states this right in a similar fashion. However, this provision makes a

clear distinction between ‘legal’ and ‘illegal’ immigrants by explicitly stating that social security will be provided only for legally residing third-country nationals, thereby excluding irregular immigrants from such protection. When it comes to the right to education, the relevant law on the education of minors is more generous. Law 3386/2005 (article 72, para.1) states that “[m]inor third-country nationals residing on Greek territory shall be subject to mandatory schooling, just like Greek nationals”. Note that, in this case, the ‘legal’ attribute before residence is not included, so it can be concluded that this provision guarantees the right to education for immigrant minors regardless of their immigration status. This is confirmed by paragraph 3 of the same article, which clearly states that

> [b]y way of exception, children of third-country nationals may enrol in public schools with insufficient documentation when: … (case d.) They are third-country nationals residing in Greece, even if their legal residence therein has not been regulated.

Thus, the Greek state recognizes the right to education as a fundamental human right and guarantees it for all minor immigrants, although not to non-minors, regardless of the legality of residence.

Two other provisions, which regulate the obligations of agencies and officers, are also important for better understanding the degree of official recognition of the fundamental rights of irregular immigrants. The first, Article 84 in Law 3386/2005, states that

> [p]ublic agencies, legal entities in public law, local authorities, public utility organizations and corporations and social security organizations shall not provide their services to third-country nationals who do not hold any passport or other travel document recognized by international conventions, or visa or residence permit and, generally, cannot prove that they have legally entered and reside in Greece, with the exception of hospitals and clinics, in case of third-country nationals urgently admitted for treatment and minors (para.1).

In addition, the following paragraph (4) states that

> [a]ny officer of the above agencies and bodies who violate the provisions of paragraphs 1 and 2 of this article shall be subject to disciplinary proceedings and shall be punished, according to the provisions of the Penal Code, for breach of duty.

Clearly, these provisions block irregular immigrants' access to any kind of social service except emergency health care offered in hospitals and clinics. However, even access to emergency health service is compromised by another provision which requires service providers, including hospital personnel, to inform the police about the arrival and departure of irregular immigrants.

The second law, Article 51 of Law (2910/2001), states the following:

> Managers of hotels, holiday resorts, clinics and infirmaries shall inform the police service or the aliens' and immigration service about the arrival and departure of any aliens they lodge (Article54; para.2).

Thus, the 2001 immigration law indirectly restricted access to emergency health care by obliging the service provider to inform the police or the immigration service about the presence of an irregular immigrant. In other words, for irregular migrants, going to clinics, even for emergency matters, carried a serious risk of detention and deportation. However, in the new immigration law of 2005, this clause was rewritten in a manner that no longer obliged hospital personnel to report on the arrival and departure of irregular immigrants, softening the previously very restrictive attitude towards irregular immigrants' access to emergency health; however, other restrictive measures have remained in play, meaning that irregular immigrants' access to any type of social service in Greece is almost totally restricted, including, most importantly, health care provision beyond emergency services.

5.4. Democratic Accountability and Irregular Immigration

In this section, I analyze the role of two democratic accountability mechanisms, civil society participation and court rulings, in the protection of the rights of irregular immigrants. To do this, I describe the patterns within which mainly civil society, but also to some extent the courts, are involved in matters concerning irregular immigrants' access to fundamental rights. This analysis builds on the theoretical discussions set out in the Chapter 3, and it relies heavily on the data gathered during the in-depth interviews conducted in Athens in February 2010. I interviewed a trade union representative, three academic researchers, two experts from the Ombudsman's office, three NGOs (two national and one international) representatives, a representative from an international governmental organization, and two migrants' organization representatives.

5.4.1. Civil Society in Migration Policy-Making

Both national and international NGOs play the role of intermediary between the state and immigrants, arguing for the interests of the latter on humanitarian grounds, particularly by defending and lobbying for their fundamental human rights. These NGOs also provide specific services to immigrants, such as food, shelter, material aid, legal counselling (Petronoti, 2001: 46). Left-wing NGOs, and also recently emerging migrant associations, actively lobby to put immigration onto the political agenda (Triandafyllidou, 2009). Greek trade unions, on the other hand, have not been very effective in protecting the rights of immigrants, partly because of Law 1264/1982, which restricts trade union participation on cases without a work permit, and partly because immigrants prefer to remain silent in the public sphere (Petronoti,

2001: 45). Thus, in the 1990s, trade unions demonstrated an ambivalent attitude towards immigration. At first, they were puzzled by the sudden influx of immigrants, and couldn't decide whether or not an ideology of working-class solidarity also included immigrants. However, during recent years they have adopted a more pro-immigrant attitude (Triandafyllidou, 2009). For example, GSEE, the General Confederation of Greek Workers, has become active on matters concerning immigrant admission and bureaucratic obstacles facing immigrants. The Greek church has also not been particularly interested in the area of immigration (Triandafyllidou, 2009: 166).

It is important to analyze the actions of such organizations because, according to Petronoti (2001: 57), bottom-up activities originating within civil society "open up space for rethinking" on (multi)culture, homogeneity and heterogeneity, even when the state does not seem to be committed to radical changes. My analysis of the interviews I conducted in Greece further develops this point, raised in the existing literature, and contributes to the arguments developed there concerning civil society's interaction with immigration related matters in general, and the rights of irregular immigrants in particular.

In order to better understand the role and actions of civil society regarding the rights of irregular immigrants I pose two questions:

- Is civil society active in offering certain social assistance to immigrants in general and irregular immigrants in particular?
- Does civil society have the capacity to put pressure on the government on matters concerning the rights conditions of immigrants in general and irregular immigrants in particular?

Concerning the first question, the findings I gathered from the interviews

indicate that there is a general awareness within Greek civil society that there are large numbers of irregular immigrants in the country, and that these people are in need of help as the Greek state does not provide much in terms of such services. Thus, civil society organizations fill a rather large gap by offering specific social services to immigrants, especially to those who lack any legal documents. Although this help may not be as systematic, regular and guaranteed for all as would be the case if it were offered by the state, still these services offered by NGOs make a huge difference for the lives of those who lack any type of security and/or social insurance. One interviewee's account illustrates the type of services that NGOs provide to irregular immigrants:

> We have polyclinics. And we provide with doctors, dentists, a gynecologist, and organized psycho social services. We provide medical treatment, exams for free, without any fee… And we give also drugs without any fee. Because most of immigration they do not have any legalization in Greece. So they are totally excluded from the medical system. For this reason we give them this support. We do not stop on that only. We have organized law services and we try to give them the support they need in order to legalize. On the other hand, we have councillors and we try when they are already legalized to provide to them help in order to be integrated in the labour market. Apart of that we have teams that they are very experienced with doctors, nurse, social worker, and psychologist, and we call them mobile units, and we try to reach marginalized immigration population at the several parks or abandoned houses they are going to find shelter. … What we are doing in order to give them to provide them emergency medical treatment, and on the other hand, in order to give them support for the hygiene and all the other [needs], because the situation is terrible. (NGO representative-II, personal communication, March 4, 2010)

This particular NGO carries out its work right in the centre of Athens, in a district called *Omonio*, which is the hub of Athen's immigrant population. The above description of its work is important for a two primary reasons. First, it clearly underlines the point that the status of 'illegal' immigrant totally excludes a person from access to even very basic emergency healthcare in Greece. It also shows that there are civil society organizations seeking to fill that gap. That is, despite the

state's restrictive regulation of the rights of irregular immigrants, certain civil society organizations have developed opposing policies and actions in order to provide the social assistance that is prevented by the Greek state, with the potential to influence the actual rights conditions of some of the irregular immigrants in the country. However, it should also be underlined that social assistance provided by NGOs cannot totally compensate for the state's violation of the human rights of irregular immigrants; neither can it fully alleviate the rights conditions of irregulars, although it may at least reduce the gravity of their problems.

Another interviewee, a representative of an international NGO, confirms that the state relies heavily on such services offered by the NGOs. However, the respondent emphasizes that it is not very easy for these organizations to offer social assistance, as the funding they receive from external sources does not come regularly. Consequently, sometimes they have put in a lot of money themselves, which can cause situations where the workers of these organizations could not get their salaries for months:

> For example, we have been paid for this program until not the whole 2009. We have been paid for half 2009, but the program is running and the ministry knows that our organization will run this program. And this is not only our case; this is also the case of Praksis, of the Doctors of the Borders... And of course we are lucky because we are being paid or you know… the expenses of the program is covered. But the other organizations that do not have many means, we know that our colleagues are not being paid for months. They have forgotten what was the last time they were paid. And the ministry knows this. (International NGO representative, personal communication, February 22, 2010)

This supports the argument that the social assistance offered by civil society to immigrants cannot be as regular as it would be if offered by state agencies. It also shows that NGOs themselves are in need of material aid, without which they cannot

continue the services they offer to the immigrants. Despite these problems, it is also clear that various national and international NGOs operating within Greek civil society have been able to provide significant social services to irregular immigrants; certainly, they have been able to make a difference in the lives of those immigrants that they have been able to reach.

Regarding the second question, whether or not civil society has the capacity to put pressure on the government on matters concerning the rights of irregular immigrants and can trigger the emergence of more protective measures, the picture is much more blurred. Civil society's influence on government has not been as developed as their activities concerning voluntary social services offered to irregular immigrants. Most of my respondents agreed that civil society cannot exert much pressure on governments on matters concerning the rights of immigrants, even though there are certain organizations that specifically seek to do this. On the other hand, one respondent stated that there are also cases where the government appoints NGO experts or an Ombudsman onto immigration related committees. Such inclusion might be considered as providing an opportunity with the potential to incorporate the rights-based approach of civil society into the decision-making processes. Although the interviewees overall depicted a rather pessimistic picture concerning NGO influence on government, I would still argue that there is not enough evidence to conclude that Greek civil society organizations are completely inactive or ineffective in influencing their governments on matters concerning the rights of irregular immigrants. There are various examples of times when civil society activism has created a more inclusive atmosphere. The first shows how pressure from civil society caused the government of the time to refrain from

enacting rather restrictive legislation that would have limited the right to education of immigrant children:

> There was a ministry circular about schools, that migrant children should provide the papers of their parents. The circular was drafted in 2002 or something, but it never came into force because the federation of teachers refused to obey. It was an example of civil disobedience. (Researcher-III, personal communication, February 25, 2010)

Another example suggests that regulations on health services were opposed by a similar kind of civil disobedience within civil society:

> There was another circular, in 2000 ... the minister of health then, saying that undocumented migrants should be accepted and treated in public hospitals only in cases of emergency. But this also, doctors do not really, medical associations of Greece reacted and said we cannot do that, we cannot refuse someone healthcare, and how we can define an 'emergency' case? I mean, is pregnancy an emergency case or not...? (Researcher-III, personal communication, February 25, 2010)

As these examples show, even if civil society organizations were not able to stop a restrictive measure from being introduced, they were able to impede their full implementation. In both of the above examples, government decisions were opposed by civil society, and implementation of the policies was matched by civil disobedience, which in turn disrupted their implementation.

For a long time, ironically, among all the pro-migrant organizations within the civil society, migrants' associations were the least influential actors when it comes to influencing government decisions concerning the protection of the rights of irregular immigrants. Triandafyllidou (2009) recalls that

> up until 2007 Greek governments had only allowed for human rights' NGOs to be heard in Parliament when discussing migration legislation. It was only in 2006 that selected representatives of migrant organizations were invited to speak to the Parliamentary Committee preparing the new law voted in 2007 (171).

The inferior position of migrant organizations in the so-called 'social

dialogue' was highlighted by most of the interviewees. The participation of these organizations in policy-making was especially discussed in relation to the work of the Committee for the Social Integration of Immigrants. Various respondents noted the way in which this committee was established, as they considered that this had had implications for the influence of migrants' organizations on government policies. The rest of this section provides examples of these remarks in relation to the committee. However, I first describe the remit of the committee itself.

Law 3386/2005, as amended in 2007 by Article 1 of Law 3536/2007, provided for the establishment of a "National Committee for the Social Integration of Immigrants" in the Ministry of Interior, Public Administration and Decentralisation. Regarding its composition, according to the said provision, other than governmental and other official bodies, the committee would include representatives from the Central Association of Municipalities and Communities of Greece (KEDKE), the Association of the Prefectures of Greece (ENAE), the Church of Greece, university scientific teaching staff, each parliamentary group, the Supreme Administration of Civil Servants Association (ADEDY), the General Confederation of Workers of Greece (GSEE), the General Greek Trade Confederation (ESEE), the Athens Chambers Commerce and Industry (EBEA), the International Organization for Migration (IOM) and the Athens Bar Association. Paragraph 4 of the same article lists the tasks of the committee as

> (i) to make recommendations and actions relating to the social integration of immigrants to the Interministerial Committee…, (ii) to conduct social dialogue and dialogue with the civil society for the establishment of policies that promote the integration of immigrants in all areas, pursuant to international law and the European *acquis*, (iii) to prepare and monitor operational programmes relating to the implementation of social integration policy for immigrants.

Some of my respondents criticised the committee's composition for not including any representatives from any migrants' organization. As one put it,

> [i]n the Commission of Social Inclusion of Migrants there are no representatives of migrants. There are the Greeks that decide how to include and how to legislate on the matter of migration in Greece. We don't have the opportunity to listen the opinion of migrants. (Trade Union representative, personal communication, February 26, 2010)

The same respondent continued:

> [a]nd in this commission, we proposed, the trade unions proposed that five members of the biggest migrants' organizations have to be represented in this commission. Our proposition have been voted for the majority unanimously of the other 24 members in this commission. And the minister of interior, which is inside of this commission, insisted on the fact that we don't need to listen the migrants. Simple. Listen, even the church here, because church here - all over the world - but here especially in Greece, the Greek Orthodox Church is very, very conservative. They voted for our proposition. The representative of the Greek Church is this commission voted for the rights of Muslims to have their own church… The state is more conservative than the Greek Church. (Trade Union representative, personal communication, February 26, 2010)

This respondent's account of the composition of the Committee for the Social Integration of Immigrants highlights the rather weak position of migrants' organizations in relation to the state. According to the respondent, the government does not consider migrants' organizations as relevant actors that should be called upon while making policy decisions concerning immigrants. This supports the argument that migrants' organizations in Greece do not have much of an influence on state regulation on immigration in general, and irregular immigration in particular, at least during in formal decision-making forums. On the other hand, one respondent from a migrants' organization noted that there are indications that the government is now willing to open negotiations with his organization. This suggests that, in the future at least, migrants' organizations may gain greater influence on policies

concerning immigrants.

One final remark on migrants' organizations that should be made concerns the material conditions under which they continue their operations. It is relatively much harder for them to continue their existence as they have to struggle hard for material support and funding. This lack of support and funding was emphasized by my respondents as an important factor weakening migrants' organizations compared to other civil society actors in Greece, and impeding their capacity to participate in the policy process. As one respondent said,

> They don't have any support. We expect that they should have financial support and this is very important because they don't have support. Actually there is no way of financial support of any NGOs or whatever if it is Greek or not. (Migrant Organization representative-I, personal communication, February 28, 2010)

However, respondents also mentioned another problem, which is the insufficient support given by the migrants themselves to their own organizations, as noted in the following statement:

> Migrant organizations are weak because first of all there is not any kind of support. There is lack of experience. Most of them, they are coming from countries such activities, such organizations are not part of their tradition. You know you can see this from the numbers. Almost 80% of immigrants are coming from ex-communist systems so they don't have this self organizing organization. This democratic, non-governmental schema is not part of their tradition. (Migrant Organization representative-I, personal communication, February 28, 2010)

Although this argument is hard to verify, this and financial problems faced by migrants' organizations calls attention to the fact that, currently, these organizations simply do not have the capacity to influence state regulation on the rights of those they seek to support, particularly irregular immigrants. Additionally, these

organizations are in no position to offer them enough social assistance to more or less compensate for their losses arising from the restrictive state policies that deny them access to their fundamental rights. The following respondent illustrates this point, albeit indirectly from a different perspective:

> Migrant organizations they are trying to fight for the right immigrants that they are legal in Greece. They do not have the opportunity or the possibility to force for the illegal immigrants. (NGO representative-II, personal communication, March 4, 2010)

This admission underlines the problem that, when migrants' organizations are pressing for the cause of the immigrants, most of the time it is 'legal' rather than 'illegal' immigrants that they work for. When it comes to supporting the rights of irregular immigrants, the migrants' organizations are much less active and influential, and they choose to (or have to) confine their activities within the limits of legality.

My respondents clearly demonstrate the rather weak influence of migrants' organizations over immigration policy making, and they consider this to be a problem. However, one migrants' organization representative claimed that this will change, as they have been working in that direction. On the other hand, the interviewees were unable to point to any particular type of organization in Greek civil society that is better able to lobby for the rights of irregular immigrants. Whereas, as I analyse in the next chapter, Spanish trade unions emerge as the type of organization having the most potential to lobby for the rights of irregular immigrants, in the Greek context, one cannot identify any such effective organization in civil society. My interviews in Greece also revealed that the pro-immigrant actions of Greek civil society tend to focus more on civil disobedience against existing

legislation rather than lobbying activity during the making of legislation concerning the rights of immigrants. In other words, civil society, mostly in the case of doctors and teachers, protests the restrictive and illiberal decisions of the governments in the form of not obeying them. However, civil society does not emerge as very influential in terms of pressuring government to draft more liberal legislation. One respondent explained this by referring to the culture of politics within Greece that is unaware of or uninterested in the views of civil society:

> But this culture here in Greece – the state, the government, every government – do not want to listen the opinion of NGOs, of trade unions, of migrants. They consider that they know everything. They don't consider that they have to listen the opinion to decide of migrants. (Trade Union representative)

Although I think that one should be cautious before explaining a specific situation by reference to an overall culture (or at least it is beyond the scope of this study to argue whether this is the case), I can nevertheless conclude that this respondent's identification of a patterned relationship between the Greek state and civil society has a potential to explain civil society's inability to exert its influence on state legislation. For example, Koumandaraki (2002) argues that, during the modernization of the Greek state in the 20th century that involved the reinforcement of the central state's rule over the country's regional nobility, civil society became obedient to the central government (Koumandaraki, 2002: 40). Thus, using Koumandaraki's argument, the particular weakness of Greek civil society in lobbying for the rights of (irregular) immigrants may reflect a deeper problematic relationship between the state and civil society in Greece.

In the interviews, I also asked questions concerning the Greek public's overall attitude towards irregular immigration and immigrants. While the information

I gathered in this way is obviously not a substitute for public opinion survey data, which more accurately represent the overall attitude of the public on a particular topic, it is important as it gives us an idea about the public sphere within which civil society organizations operate concerning irregular immigration. If there is a relatively more receptive public atmosphere towards irregular immigrants then I can expect that this also helps, or least would not hinder, the development of the pro-immigrant actions of civil society. However, as Maroukis (2009: 28) notes, irregular migration has rather negative connotations in Greek society. *Lathrometanastefsi*, which means "smuggle-migration", is the name given to irregular migration in Greece. Recently, irregular immigration is generally understood mainly in terms of the human smuggling activities operating across the Greek-Turkish border (Maroukis, 2009: 30). Similarly, some of the respondents pointed out that there is a certain degree of anti-immigrant sentiment in Greece, and most of them argued that, with the current economic crisis, public attitudes towards immigrants will become more and more negative. More importantly, concerning the social rights of irregular immigrants, one representative stated that the social security system in Greece has collapsed, which will badly affect the situation of irregular migrants:

> Our security system is collapsed. We have to renovate all the system and unfortunately public opinion considers that we have to exclude the migrants from having access to social services, for free public social services. This is a transitory period for our country concerning the irregular migrants. (Trade Union representative, personal communication, February 26, 2010)

Although this respondent implies that Greek people in general are against providing free public health and education services to irregular immigrants, a clear conclusion about this can only be made from the data from a representative public opinion survey on the protection of the rights of irregular immigrants. Nevertheless,

earlier research, based on interviews with public officials, NGO representatives and trade unionists, concluded that, in Greece, "claims to human rights, the principle of equality and working class solidarity are overall weak and tend to be subsumed to the prevalent nationalist discourse of 'Greeks first'" (Triandafyllidou, 2000B: 384). Therefore, based on the information I gathered through my interviews, and that provided by earlier research, I conclude that the public sphere, and the overall atmosphere in Greece, is not very receptive towards irregular immigrants, and that the public in general do not seem to support the protection of the rights of irregular immigrants. However, to reiterate, reaching a more nuanced and certain conclusion on this topic would require further research, including comparative public opinion surveys.

5.4.2. Courts

In this study, I focus on the impact of democratic accountability mechanisms, and, together with the civil society activism, judicial activism is considered as a democratic accountability mechanism that can act as a liberal constraint on regulations concerning the rights of irregular immigrants. In other words, by ruling according to national liberal constitutions, and within the parameters of international human rights regimes, courts can prevent the human rights violations of irregular immigrants. For this reason, during the interviews in all three countries, I wished to discuss with my respondents any incidences where a court had reviewed and blocked the implementation of restrictive measures concerning the rights of irregular immigrants, such as access to public health care and education. That is, I asked whether or not there were any incidences where irregular immigrants had gone to the

courts to demand their rights.

In Greece, based on the responses, I can conclude that court rulings are not an important factor that might put pressure on governments to revise measures that restrict irregular migrants' access to their social rights. When I asked what might be the possible causes of such a situation, one respondent gave the following explanation:

> They [irregular immigrants] are afraid [to go to courts]. In fact there are not many cases even from documented migrants as far as discrimination. Because, you know, there are two directives for the establishment of the principle of equal treatment, the European Directives, against discrimination in the administration and in the workplace. They have been transposed to national legislation but we don't have so many cases of migrants. We have addressed to competent authorities of these two directives. One is the ombudsman and the other one is the labour inspectorate board, as far as workplace is concerned. Even documented migrants, as far as I know, they do not address the court so easily. (Researcher-III, personal communication, February 25, 2010)

This response introduces two important points. First, it suggests that, even though a legal framework for protecting the rights of immigrants exists, there are not many applications to it complaining about discrimination. Secondly, it highlights that even documented migrants are afraid to go to courts, let alone irregular immigrants. When I asked the same respondent why immigrants would be reluctant to apply to the courts in defence of their rights, he gave as important reasons immigrant applicants' lack of practical knowledge about their rights and about how to ask for their rights:

> They do not know their rights, for example if someone is discriminated upon, for example if he takes less money than a colleague who is Greek, this is discrimination. And you know, according to these directives and according to law, it is not the victim, the burden of proof goes to the boss, for example, who discriminates. Not to the victim. Mostly migrants do not know, and here is one of the democratic accountability mechanisms who don't work maybe so efficiently. I mean they don't provide some practical information, even to migrant. In my opinion, ok? I am talking about how I see. I am working for

> more than 10 years, I have also worked for NGOs. I think one thing is that mostly practical information is not provided about when I have a problem, when my boss does that, or in the administration if they don't serve me or something, there is no this practical knowledge. (Researcher-III, personal communication, February 25, 2010)

Together, these two responses demonstrate that Greek courts are not functioning as effective democratic accountability mechanisms in relation to immigration, especially in the case of irregular immigration. The most important reason behind this is that irregular immigrants, as well as immigrants with valid documents, are afraid to go the courts, or they do not even know their rights. For irregular immigrants, another reason may be the uncertainty of their status in law. That is, every immigrant has certain rights deriving from democratic liberal constitutions and international human rights regimes; however, at the same time, their presence within that particular territory is legally problematic in terms of that country's national legislation concerning migration. Therefore, the national courts have remained more or less outside the struggle to protect the rights of irregular immigrants.

5.5. Concluding Remarks

Starting by the 1980s the number of immigrants in Greece has grown very dramatically, and today immigrants constitute a very large portion of the Greek population. More specifically 10.1 % of the 2010 population is constituted of immigrants who are mainly Albanians, Poles, Bulgarians and Romanians. Numbers of asylum seekers and irregular immigrants are especially high and increasing in Greece. The main reason for this situation is the country's geographical location within the European Union: Greece emerges as an entry door for immigrants who

are heading to central and Northern European countries of the European Union.

Irregular immigrants in Greece work mainly in construction, domestic care, agriculture, repair work, tourism, catering and peddling in Greece. Concerning the latter type of work, during the time of the field research in Athens, I found the chance to observe that street seller immigrants mainly from African countries make a long queue that started from the central Sintagma Square to the historical district Plaka. Existing research states that Greece has adopted rather strict measures towards both the entry and residence of immigrants and as a result legal routes of labour immigration has turned out to be almost impracticable (Triandafyllidou, 2000A; Triandafyllidou, 2009; Petronoti, 2001). However, certain sectors of the Greek economy are dependent on immigrant labour and once immigrants enter the country, they are easily integrated into the informal market. As a result, immigrants continue to come through illegal routes and they continue to live under "illegal" statuses in Greece. Immigration rules and regulations of the state are rather intolerant towards the existence of immigrants without papers. Irregular immigrants have very limited access to public services; hence official protection of their fundamental human rights is very much restricted. Children of irregular immigrants have a right to benefit from public education according to the legislation. A specific clause of the law grants this right especially to those minors who lack a regular legal residence. When it comes to health care provision, irregular immigrants could have an access only to emergency health care services. Thus, the law does not block access to emergency health care; however the protection of this fundamental human right is complicated by other provisions which forbid public officers to offer their services to irregular immigrants and oblige them to inform the police when they

come across irregular immigrants. Therefore, access to health care services in the country carries a certain risk of deportation in the case of irregular immigrants.

Findings of the interviews point out that there are various civil society organizations in Greece that offer very basic social assistance to irregular immigrants, and by this way they indirectly compensate for the lack of official protection of irregular immigrants' fundamental human rights. These services cover most importantly health care assistance as the thin line between an emergency and a non-emergency situation may be rather complicated. Adding to that there are also various civil society organizations that are protesting the rather restrictive nature of the treatment of irregular immigrants, and supporting a better protection of irregular immigrants' rights. However, interview findings show that civil society activism on this matter does not have much of an impact on the state while decisions are being made in relation to the situation of irregular immigrants in the country. In relation to the involvement of courts to the protection of irregular immigrants' rights, interview findings point out that irregular immigrants are reluctant to go to courts in order to revoke restrictive measures on fundamental human rights that block the application of universalistic measures.

CHAPTER 6

SPAIN

6.1. History of Immigration in Spain

Until the mid-1980s, similar to Greece (and other Southern European Countries), Spain used to be a country of emigration. The first significant wave of emigration took place between 1880 and 1930 when more than three million Spaniards emigrated to countries such as Argentina, Mexico, Brazil, Venezuela and Cuba. The second wave of emigration came in the period between 1950 and 1970. This time, more than a million Spanish people moved to Northern European Countries, such as Switzerland, Germany and France. At the same time, there were of course immigration inflows to Spain within each of these periods; however, the number of incomers was not sufficient to change the balance from a negative net migration (Serrano et al. 2009). For example, in the 1960s and 1970s, Spain received tens of thousands of European retirees, who were looking for a warm climate, coupled with good amenities and low living costs. Additionally, a few thousand Moroccan workers and Latin American refugees arrived, who were running away from military dictatorships in their countries of origin (Arango, 2000). As Arango (2000: 255) explains, "until the mid-1980s, Spain could hardly be seen as an

immigration country. In the early years of that decade, the number of resident foreigners did not exceed 200,000 – two-thirds of them from Europe".

By the mid-1980s, however, Spain had become a country of immigration: and in the following 15 years, the number of immigrants trebled or quadrupled; annual immigration flows became regular; and the number of immigrants from Africa, Latin America and Asia increased strikingly. As a result, immigration has become an interest for public opinion and an important area of public policy (Arango, 2000: 255). "In 1999 there were fewer than 750,000 foreign residents in Spain, representing only 1.86% of the population. The latest data, from the beginning of 2009, indicate that just ten years later there are more than 5.5 million immigrants, which is 12% of the population" (Lopez-Sala and Ferrero-Turrion, 2009: n/a).

According to data from the National Statistics Institute, the largest group of immigrants in 2007 was Moroccans with 12.9 %, followed by Romanians and Ecuadorians with 11.7% and 9.5% respectively (Serrano et al., 2009). However, by the beginning of 2009, Romanians constituted the largest group of immigrants. Of non-EU citizens, Moroccans constituted the largest group, followed by Ecuadorians and Columbians, and Spain continues to attract non-EU immigrants from a diverse set of countries, such as Paraguay, Brazil, Ukraine and Pakistan (Lopez-Sala and Ferrero-Turrion, 2009).

In the 1980s, during the initial stages of becoming a country of immigration, Spain was mainly a transit zone for immigrants, who were mainly from Latin America and Africa, and heading for Northern European countries. Later on, and gradually, immigrants came to settle within Spain turning it into a destination country for immigrants from various places, although it also retained its role as a

transit country. Various ways can be offered to explain Spain's transformation into an immigration country. One such explanation concerns the restrictive European migration policies of the mid-1970s and 1980s, which almost ruled out immigration to Northern European countries. Thus, instead of moving towards Central and Northern European countries, immigrants came to settle in Spain. In addition, Spain's entry into the European Union in 1986 can also be considered as an attraction for immigrants aiming to settle in an EU country. Thirdly, rapid economic growth also contributed to Spain's emergence as a destination country. Fourth, one can add the demand for immigrant labour for certain jobs in certain sectors of the Spanish economy, as these jobs were being turned down by the natives of the country. Specifically, a need emerged in the Spanish labour market for low-paid '3D work' (dirty, dangerous and demeaning). For various reasons, Spaniards had become more and more reluctant to work in these types of jobs, which had created a demand on the part of employers for foreign workers. Thus, immigrant workers have gradually come to fill this 'gap' in the Spanish labour market (Serrano et al., 2009: 93). Finally, one should also bear in mind the ever growing economic, social and political problems and hardships that prevent many people from living a decent life in Africa and Asia, which has pushed more and more people to migrate to European countries, including 'new' countries of immigration such as Spain. According to a national survey conducted among migrants in 2007, the main reason for immigration to Spain was "searching for better quality of life", with unemployment in the home country being commonly mentioned as one reason for moving to Spain (Serrano et al., 2009: 97). Whether or not immigrants are actually able to achieve a better quality of life in Spain is questionable; however, the ever-deteriorating living

conditions in non-Western countries has certainly contributed a lot to the emergence of Southern European countries in general, and Spain in particular, as destination countries for non-EU migrants.

As noted in the previous paragraph, immigrants tend to occupy low-paid jobs, which are usually turned down by Spanish natives. This means there is not intense competition between immigrants and natives concerning job vacancies, and that immigrant work does not have a negative effect on the wages of the natives (Lopez-Sala and Ferrero-Turrion, 2009). Immigrants tend to work in unskilled jobs, mainly in construction, hotel services, intensive agriculture, and domestic service (Lopez-Sala and Ferrero-Turrion, 2009). Although it is clear that immigrants come to Spain mainly for reasons of employment, Spain, similar to other countries of immigration, has been unable to successfully regulate foreign labour demand and supply through legislation (Arango and Finotelli, 2009: 83). As a result, "[t]he mismatch between inadequate policy regulations and strong demand for labour in the economy [has] fuelled irregular migration flows" (Arango and Finotelli, 2009: 83).

Geographically, immigrants in Spain are mostly concentrated in certain areas, particularly Catalonia, Valencia, Madrid and Andalusia, in a "highly concentrated spatial distribution" (Ribas-Mateos, 2005). The conditions of the labour market, migrants' networks, and factors concerning housing and cultural practices all influence immigrants' preferences to settle in these regions. As a result of this unequal distribution across the country, in certain regions, immigrants constitute a significantly higher proportion of the total population. For example, according to 2008 statistics in the Madrid region, immigrants make up 13.3% of the total population, and in Catalonia they constitute 12.81% whereas in other areas like

Asturias and Galicia they constitute 4.2 % and 2.67 % respectively (Serrano et al., 2009: 96).

Table 3 below gives specific descriptive statistics related to immigration in Spain. To help provide background information for contextualising the research question, the data here can be compared to the data in Table 1 in chapter 5 and Table 5 in chapter 7, on Greece and Turkey respectively.

Table 3: Migration Related Statistical Information on Spain

Population (2010)	45.3 million
Net Migration Rate (2005-2010)	7.9 migrants /1,000 population
Immigrants as a percentage of total population (2010)	14.1 %
Inflow of asylum seekers (2009)	3,000
Estimates of number of irregular foreign residents (2008)	280,000 (minimum estimate) 354,000 (maximum estimate)
Number of apprehended irregular migrants at sea borders (2007)	18,057

Source: The data in this table is produced from multiple secondary sources: the figures in the first three lines are gathered from the International Organization for Migration (IOM) data (available at http://www.iom.int/jahia/Jahia/activities/europe/southern-europe/spain, retrieved on 07.10.10). The data on the inflows of asylum seekers is from OECD-International Migration Data 2010 (available at http://www.oecd.org/document/57/0,3343,en_2649_33931_45634233_1_1_1_37415,00.html, retrieved on 07.10.10). Estimates of irregular foreign residents is from Kovacheva and Vogel's (2009) study, which reports the results of "CLANDESTINO: Counting the uncountable – data and trends across Europe" project (2007-2009), funded by the European Commission, DG Research, Sixth Framework Programme. Finally, the number of apprehended irregular migrants is from the study of Arango and Finotelli (2009), which reports on the results of the project REGINE: Regularisations in Europe Study, on practices in the area of regularisation of illegally staying third country nationals in the member states of the EU.

Table 3 shows that, at 14.1 percent, immigrants make up a slightly larger proportion of Spain's population than in Greece, which was 10.1 percent. The net

migration rate is also higher in Spain (7.9/1,000 people) than Greece for the same period. However, Spain received far fewer asylum seekers in 2009 than Greece (3,000 compared to 15,930).

In general, Spain does not attract asylum seekers as much as other European countries. According to 2008 data from CEAR (Comisión Española de Ayuda al Refugiado-the Spanish Commission for Refugee Aid), the number of asylum applications was 7,581 in 2007. Multiple reasons could be given for this. First, this may be because of low acceptance rates for asylum applications. According to CEAR's 2008 data for Spain, only 204 people were granted refugee status in 2007, while 90 percent of applications were turned down. Another explanation may derive from the specific conditions of Spain. Most asylum seekers find it easier to remain irregularly in the country and look for other ways of legalizing their stay, such as through regularization (Serrano et al., 2009). In other words, rather than officially applying for refugee status, thereby putting their prospects of staying in the country at risk, asylum seekers prefer to remain irregularly and wait for regularization in order to legalize their status. Thus, most of the asylum seekers stay as irregular immigrants in Spanish territory, which increases the number of irregular immigrants in the country and lowers the rates of asylum applications.

Like Greece, Spain attracts a large number of irregular immigrants: between 300,000 and 1,800,000, depending on the source providing the figures (Serrano et al., 2009: 101). In Table 3, the highest estimate of the number of irregular foreign residents in Spain for 2008 is Kovacheva and Vogel's (2009) figure of 354,000. Other sources, depending on different methods of calculation, provide considerably larger estimates. For example, in 2005, there were 3.73 million foreigners registered

with local municipalities.[25] However, only 1.98 million foreigners had a valid residence permit at that time, implying a difference of 1.75 million people, who may be considered as irregular immigrants (Serrano et al., 2009: 102).

Table 4: Number of detected migrants at Spanish sea borders between 2000 and 2007

YEARS	TOTAL APPREHENSIONS (at Sea Borders)
2000	15,195
2001	18,517
2002	16,670
2003	19,176
2004	15,671
2005	11,781
2006	39,180
2007	18,057

Source: The data in this table is reproduced from Table 4.6, 'Detected migrants at the Spanish sea borders', from Arango and Finotelli (2009: 91).

Table 4, which shows the number of apprehended irregular immigrants (at sea borders) across the years, provides us with an estimate of the number of irregular immigrants within Spain. As with the Greek case, the figures fluctuate over the years, but one cannot discern the real cause of this variation. For example, it could be argued that, as a result of the current economic crisis, and the consequent decrease in job opportunities, both the number of irregular immigrants within the country and the number of those who intercepted at the borders decreased in 2008. However, one could also surmise that border control and effective expulsion procedures contributed to such a decrease (Serrano et al., 2009: 101).

[25] Registration is obligatory in Spain in order to have access to free social services, anyone can register themselves in the local *padrón* without the need of a residence permit. In the following sections, there is more information on these local *padróns*.

As a final remark, it should be noted that illegal entrance constitute a very small percentage of irregular immigration in Spain because most irregular migrants in Spain are visa-overstayers, whereas illegal sea arrivals constitute only 10 percent of the irregular presence in Spain. Nevertheless, ironically, it is the latter kind of immigrant that attracts media attention (Serrano et al., 2009: 102). As Serrano et al (2009: 102) note, "[i]n 2003, 19,000 people were apprehended trying to reach Spanish coasts in *pateras* (small boats). Yet 1 million people arrived in Spain via Barajas airport with tourist visas and then failed to leave the country".

6.2. A Brief Overview of Immigration Policies of Spain

Since the 1980s, the main goals of Spanish migration policy have been controlling the movement of immigrants and irregular immigration, while matters concerning the social integration of immigrants were not considered initially (Serrano et al., 2009: 107). Rather, in the 1980s, immigration to Spain was mainly considered to be a temporary process, concerning only employment motivated immigration, and policies were adopted accordingly. Until the end of the 1980s, there was no major parliamentary debate, and no participation of civil society in discussions on possible legislation. In the 1990s, however, various new regulations were developed for the management of immigration, such as entry and visa regulations, border security strategies, permanent work permits, and a tighter asylum policy in line with that of the EU's asylum policy. The rationale for an integration policy was also formulated in these years. It was not until the first half of 2000 that Spain finally recognized the permanent character of immigration, and adopted new laws with a specific focus on integration and the social and political rights of

immigrants. However, using its absolute parliamentary majority, the centre right Popular Party still restricted certain rights and freedoms in the first law of 2000 that largely governed irregular immigrants (Serrano et al., 2009: 107-9). In the following paragraphs, the immigration policies and the policy-making process in Spain is described more in detail, especially by paying particular attention to the first immigration law of 2000, and the second one (in the same year), known as the "counter" law.

The first Spanish legal framework on immigration was prepared in 1985. Before that, the country did not have any formal law on immigration. The *Ley Organica 7/1985 de 1 de Julio sobre los derechos y libertades de los extranjeros en Espana* (Organic Act 7/1985, of July 1, on the rights and liberties of foreigners in Spain and their social integration) came into force right before Spain became a member of the European Union. The goal of harmonizing Spanish law on migration with EU regulations determined most of the efforts at this time in the management of migration (Laubenthal, 2007; Lopez-Sala, 2005). With this law, the Spanish government sought to soothe the fears of central and Northern EU states that Spain would become an entry point of irregular immigration into the EU (Gonzales-Enriquez, 2009A: 140). With such concerns in mind, Spain's first immigration law was very restrictive.

To start with, the 1985 law made legal entry into, and stay in Spain very difficult. Family reunification and permanent residency were ruled out and legal channels for labour immigration were also more narrowly and strictly defined (Gonzales-Enriquez, 2009A). Residence permits would only be granted for short periods, and were not subject to renewal (Laubenthal, 2007). According to Lopez-

Sala (2005: 38), "[i]t was a restrictive law which did not consider the immigrants as a person with rights but rather as manpower for the economy". The 1985 law had another negative consequence on the rights of Spain's existing North African population by turning one third of them, who were living in the Spanish colonial enclaves of Ceuta and Melilla in Northern Africa, into irregular immigrants because they had Moroccan origins. This caused such severe protests and mobilizations for naturalization that, in the end, the Spanish state developed a special process of naturalization in both Ceuta and Melilla, allowing Spanish citizenship to be granted to most of the applicants (Gonzales-Enriquez, 2009A: 141).

Apart from the protests concerning the Moroccan population in Ceuta and Melilla, the 1985 law was passed without public discussion or dissent, or even any sustained concern on the part of pro-immigrant political parties or other political associations. This situation may be explained by immigrants' rather uneven distribution within Spanish territory at the time, which reduced their visibility and contributed to the lack of interest on the part of the civil and political community (Gonzales-Enriquez, 2009A). After the 1985 law was enacted and implemented there were local tensions and concern in areas such as Catalonia and Madrid, where immigrants were large in numbers, however immigration policy-making was not an issue at the top of the political agenda at that time. As a matter of fact, it was the main Catalan nationalist party that first proposed to amend the 1985 law, criticizing it, both as an obstacle hindering immigrants' successful integration into Catalan society, and for its lack of concern for their social rights. The United Left and some other small parties joined the Catalan nationalist party's efforts to amend the law, proposing a new version whose goal was to better integrate immigrants (Gonzales-

Enriquez, 2009A).

Given Spain's recent history, Gonzales-Enriquez (2009A) argues that the atmosphere of the time suggests that Spanish society did not wish to deny fundamental rights to immigrants, but instead had other concerns:

> Few dared deny these rights, which were recognized in the law not just out of humanitarian duty but also as a defence mechanism for the rest of the society: the argument was to control the possibility of immigrants spreading contagious diseases (there was talk of tuberculosis reappearing), and avert juvenile delinquency among adolescent immigrants not enrolled in school (142).

Thus, advocacy of immigrants' rights at the time was not made solely out of humanitarian causes but instead out of concern for the well-being of Spanish society. Indeed, public opinion surveys indicated that Spaniards held rather positive attitudes towards immigrants (Gonzales-Enriquez, 2009A), and a compassionate attitude towards immigrants also emerged in the media, while NGOs were active concerning immigrants' rights. Together with pro-immigrant human rights NGOs, trade unions and migrants' organizations also played an important role in pressing for measures concerning social integration in the late 1990s against the restrictive measures of the 1985 law (Lopez-Sala, 2005). Thus, whether out of humanitarian or pragmatic reasons, support for the rights of immigrants and demands for policies that would enhance integration started to be spoken out loud. Following that, proposals were made to draft a new law offering full social rights for immigrants and measures ensuring better social integration into Spanish society (Lopez-Sala, 2005).

In 2000, rather more liberal legislation establishing rights and freedoms on the same basis as Spanish nationals for immigrants, including irregular migrants, replaced the Organic Act 7/1985 (Laubenthal, 2007). Unfortunately, this new law,

Law 4/2000, on the Rights and Freedoms of Immigrants in Spain and their Social Integration, was soon amended when the right-wing Popular Party gained an absolute legislative majority in the parliament, and so became able to reflect its discontent with the liberal nature of the original law. Accordingly, in the second half of 2000, Law 4/2000 was amended by including more restrictive provisions. The bulk of these particularly concerned irregular immigrants, taking away some of the rights previously granted to them, such as the right to trade union membership, the right to join demonstrations and the right to strike.

In the second half of the 2000s, with the Socialists again in power, a more liberal attitude towards immigration was readopted. For example, a regularization campaign (2005) was conducted, and certain funds provided to autonomous communities and municipalities for the civic and social integration of foreigners. However, since 2008, in the context of the global economic crisis, a more restrictive approach towards immigration has begun to replace this liberal attitude, both in the discourse and policies of the current Socialist government (Serrano et al., 2009: 107-9).

In Spain, before the latest economic crisis, during times of economic growth, the flow and integration of foreign labour had been regulated solely by the mechanisms of the market (Lopez-Sala and Ferrero-Turrion, 2009). The system was coined by some scholars as a "cheap model", within which immigrants were allowed to come irregularly, before being regularised and integrated into the labour market (Gonzales-Enriquez, 2009A). "In the meantime, in order to make their lives easier and prevent problems related to public health or public order, irregular immigrants [were] granted health care and schooling for their children" (Gonzales-Enriquez,

2009A: 144). This system was considered ‘cheap’ as it was the lowest cost solution for the management of immigrant labour flow.

However, the global economic crisis hit Spain hard and affected immigrants much more than it did natives. The statistics for mid-2009 record that there were more than 4 million unemployed, 17.92 % of the active population. Whereas 16% of Spain’s native population were unemployed, 28% of the immigrant population were, and this immigrant unemployment rate has continued to increase. In order to manage immigrant labour within the changed context of economic crisis, new programs have been designed to promote state sponsored repatriation programs for immigrants. Through these special programs, the Spanish government have sought to reduce the number of unemployed immigrants within the country. For example in 2003, the Spanish government launched a “voluntary return program for immigrants in socially precarious situations” (PREVIE - *Programa de retorno voluntario de imigrantes desde España*). The program covers non-EU immigrants who lack the resources to integrate into the Spanish society, and who end up in precarious social situations. Most of the applicants have relatives in their home country whom they need to take care of so the program covers all the travel expenses of these immigrants to get back to their country of origin. The immigrants’ legal status did not matter in the application for this program (Lopez-Sala and Ferrero-Turrion, 2009). Originally, mostly female immigrants applied for this program. However, with the deepening of the economic crisis, the number of men applying to the program has increased as well. In 2008 and 2009, the number of applications increased significantly compared to 2003. Regarding nationality, mainly, Argentineans, Bolivians, Brazilians and, less frequently, Ecuadorians and Columbians have used the program (Lopez-Sala and

Ferrero-Turrion, 2009). Another measure designed to encourage immigrants to return to their country of origin is the "Early Payment of Benefits to Foreigners Program" (APRE - *Plan de Abono anticipado de Prestación a Extranjeros*). In contrast to PREVIE, this program only applies to immigrants with legal statuses. In this program, immigrant workers can receive a lump payment of their accumulated unemployment benefits if they return to their country of origin and promise not to return for three years. They are also entitled to free transportation back to their country of origin. Immigrants receive 40% of their unemployment benefit before departure from Spain and the remaining 60% after they arrive to their country of origin.

Even though it was the immigrant labour which was hit hardest by the economic crisis in Spain, applications to voluntary return programs remained rather low, and had little impact on encouraging immigrants to return to their country of origin, and hence on reducing the number of unemployed immigrants within Spain. For example, the APRE program outlined above attracted only 5% of the potential beneficiaries in the initial stages of its implementation. One such explanation for immigrants' reluctance to participate in these programs may be the much worse living conditions awaiting many immigrants in their country of origin. In addition, there are other factors involved: although the state can design such repatriation programs that successfully encourage some immigrants to return home, others keep coming as there is a global structural problem of pull and push factors. That is, as long as problems of (under)development in migrants' home countries remain unresolved, programs like those of the Spanish government are destined to make little impact on migration patterns.

To complete this section, a specific focus on the nature of regularization programs is also useful in order to provide a complete overview of Spanish immigration policies. In Spain, six regularisation programs (1985/1986, 1991, 1996, 2000, 2001, 2005) were held between 1985 and 2009 (Arango and Finotelli, 2009). There have also been other individual regularisations as well, concerning various migration conditions, such as family reunification and humanitarian protection. However, it has been mainly the mass regularisations that have considerably affected the level of immigrant irregularity within the country. A general condition for application to the regularisation programs has been proving residence in Spain before a certain reference date. For example, previous employment in Spain has been considered desirable in most of the programs, although it is not essential. In the 2005 regularisation program, however, employment in Spain was declared to be a crucial condition for application. Regarding the effectiveness of the regularization programs, they can be criticized for times when administrative practices have fallen behind schedule for the necessary steps for their implementation. Nevertheless, "about 1.2 million foreigners were regularised in Spain since 1986 – half of them after the regularisation of 2005" (Arango and Finotelli 2009; 84). Although regularisations could not totally eliminate immigrant irregularity in Spain, still the programs have contributed a lot to the inclusion of irregular immigrants within the social system and to the protection of their rights; most regularised immigrants have been able to renew their permits in the years following their initial regularisation process (Arango and Finotelli, 2009). In short, in comparison to Greece's experience with regularization, in Spain it has worked more efficiently in integrating irregular immigrants into Spanish society on a more stable and regular basis.

6.3. Irregular Immigration Policies and Rights of Irregulars in Spain

Irregular migration has turned out to be rather regular in Spain. That is, there is a high percentage of immigrants who spend a certain part of their time in Spain under irregular statuses (Lopez-Sala and Ferrero-Turrion, 2009). The reasons for this regularity of irregular immigration are similar to the reasons in other Southern European countries. For example, when pathways towards irregularity are considered, a very similar pattern to the Greek case can be observed in Spain as well. According to existing research and statistics on irregular immigration, one way into irregularity is illegal entrance, as in any other receiving state; hence, there are foreigners who are trying to get into Spain without any official permission to enter (Serrano et al., 2009). However, this route towards irregularity is not as common in Spain as it is in Greece, and it does not constitute the main cause of 'illegality' in the country. Rather, according to existing research, most irregular immigrants in Spain are visa-overstayers, who originally arrived as tourists (Serrano et al., 2009: 102), while another group experience "befallen irregularity" (Gonzales-Enriquez, 2009B). This term is used to describe a situation where immigrants are unable to renew their permits (work and/or residence) because of problems arising within the state bureaucracy, such as the slow processing of documents that cause immigrants to miss deadlines. Befallen irregularity is very common in Spain, creating a considerable segment of the irregular immigrant population in the country (Gonzales-Enriquez, 2009B; Lopez-Sala and Ferrero-Turrion, 2009). In order to prevent this situation, as of 2000, the immigration law of Spain declared that, when there is no official response after three months following an immigrant's permit application, this lack of

answer will be considered as a positive answer (Gonzales-Enriquez, 2009B: 9).

Spain has sought to reduce this strong pattern of irregularity, and consequently large number of irregular immigrants, by launching multiple regularisation programs, which have legalised the statuses of around 1,200,000 irregular migrants in the country since 1985. Spain also introduced an annual quota system for labour immigration in 1993. This system was originally designed to recruit foreign workers in their countries of origin, but it has also turned out to be a useful mechanism for reducing the number of irregular immigrants by legalising the statuses of those irregular immigrants already present within the country (Laubenthal, 2007: 114).

Various explanations, focusing on why Spain has become an attractive destination for irregular migratory flows, have been proposed to explain Spain's regular pattern of irregular immigration. For example, Gonzales-Enriquez (2009B: 6) identifies four reasons: (1) the existence of a large informal economy where irregular migrants can easily find jobs; (2) the existence of relatively positive public attitudes towards immigrants; (3) the existence of a "traditional tolerance" towards illegality in political culture; (4) the granting of social rights to irregular immigrants.

Gonzales-Enriquez's last point is rather interesting, as she considers granting of social rights as a pull mechanism for irregular immigrants, and in fact Spain is the only country in the European Union where irregular immigrants can register themselves with the local register of inhabitants, called the *padrón* (Gonzales-Enriquez, 2009B: 6). Thus, in theory, undocumented immigrants (irregular immigrants) can in fact be documented. This *padrón* is kept by all municipalities, and it is essential for access to free social services, such as health care or education,

offered by the Spanish state. In other words, irregular immigrants as well as immigrants with a legal status have an equal right to services as Spanish citizens, but only if they register themselves with the *padrón* of their Local Councils. In order to be registered, it is sufficient merely to show a document such as an electricity, gas, telephone or a similar utility payment receipt, an accommodation rental contract, or a declaration by another resident stating that the applicant shares accommodation with him/herself. While there are general requirements applicable in each municipality, administrative practices concerning registration to the *padrón* may diverge from municipality to municipality (Gonzales-Enriquez, 2009B: 20-1). For example, some municipalities do not require any documentation at all, whereas others are stricter. Until 2003, registration to the *padrón* did not carry any risk of identification and deportation because the Ministry of Interior, i.e. the police, was not allowed to check it. However, as of 2003, amendments made to the Foreigners' Law of 2000 removed this restriction on the police, giving them the right to access the *Padrón*. Nevertheless, the Ministry of Interior has not yet utilized this power, and the number of registered immigrants in the *padrón* has not declined since 2003 (Gonzales-Enriquez, 2009B: 16).

Other aspects of the original Foreigners' Law of 2000, the *Ley Organica 4/2000 sobre los derechos y libertades de los extranjeros en Espana y su integracion social*, are worth considering, as it contained some important provisions protecting the rights of irregular immigrants. Specifically, although illegal entrance to Spain remained an unlawful punishable act, the law ruled out automatic deportation of an illegal resident. In addition, it granted rights of assembly, demonstration, unionization, and strike, as well as the right to public healthcare for irregular

immigrants. However, as discussed earlier, certain provisions of this law were quickly amended the Partido Popular, came to power. As well as the changes outlined earlier, the new amendments drew a clear line between legal and illegal immigration (Laubenthal, 2007: 114). In this way, Laubenthal (2007: 115) reports, "the law reintroduced deportation as a consequence for illegal residence and introduced high employer sanctions for employers recruiting irregular immigrants. It also revoked the rights granted to illegal migrants by the *Ley* 4/2000, including rights of assembly, demonstration, unionization, and strike action. On the other hand, certain rights remained protected: irregular immigrants retain the right to free healthcare, and their children also have the right to free education on the same basis as other immigrants with legal statuses and Spanish citizens. The only requirement for realising these rights is to register in the *padrón* (Gonzales-Enriquez, 2009B).

Access to education has been further clarified in another amendment, specifically Article 9 (para.1) of the Organic Act 2/2009 of 11 December 2009 (reforming the Organic Act 4/2000 of 11 January 2000, on the rights and liberties of foreigners in Spain and their social integration):

> Foreigners aged under sixteen years of age have the right and duty to attend education, including access to basic, free, compulsory education. Foreigners aged under eighteen years of age also have the right to post-compulsory education. This right includes the right to obtain the corresponding academic qualification and access to the public system of grants and bursaries under the same conditions as Spanish citizens. Should they reach the age of eighteen years during the course of the academic year, they shall retain this right until conclusion thereof.

This article indicates that there are no restrictions concerning the access to education rights provided by public services due to a lack of legal status (except for not having registered with the *padrón*). In other words, the article does not directly

require proof of legal residence within the country in order for immigrant children to have the right to education. The third paragraph of the same article (9) encourages public authorities to provide such services to foreigners:

> (para. 3) The public authorities shall make efforts to ensure that foreigners are able to receive education in order to further their social integration.

Note that this provision carries the opposite wording to its equivalent in Greek legislation, which obliges the public authorities to notify the police once they come across irregular immigrants during the provision of their services.

As with the right to education, the right to free health care is also regulated in the same manner. Article 12 of the same legislation states the following:

> (para.1) Foreigners in Spain registered on the municipal register of residents [i.e. the *padrón*] for the municipality where they have their regular abode are entitled to health care under the same conditions as Spanish citizens.
>
> (para.2) Foreigners in Spain are entitled to emergency public health care as a result of serious illness or accident, whatever the reason, and to ongoing care up until their medical discharge.

Note that, both in Article 9 and 12, the wording of the legislation is "foreigners" rather than "legal residents" or "legal immigrants", although in some other provisions of the law, such as the one regulating housing rights (article 13), this right is granted to "foreign residents" rather than to all "foreigners" in the country.

When it comes to detention, Spanish law says that irregular immigrants can be held in detention centres for only up to 40 days[26]. If the police, administrative, and judicial systems cannot identify and return the migrant to his or her country of origin within this period, then the person must be freed from the detention centre (Gonzales-Enriquez, 2009B: 8). Gonzales-Enriquez (2009B) argues, for several reasons, that this indicates an ambivalent attitude towards irregular immigrants on

[26] Spain is in the process of introducing legislation to prolong this detention time as a result of EU pressure.

the part of the Spanish state. First, she considers that public attitudes toward foreigners influence the official authorities when they are enacting policies concerning detention, in that political leaders tacitly "understand" that, to a large extent, public opinion is opposed to the idea of mass expulsions of immigrants (Gonzales-Enriquez, 2009B: 16). For example, she points out that, as opposed to other receiving countries, there aren't very many cases in Spain of private citizens reporting the presence of irregular immigrants to the authorities (Gonzales-Enriquez, 2009B: 16). Second, she argues that there is strong pressure against deportations from the economic sector, where irregular immigrant labour is very important, making this another factor encouraging the state to preserve an ambivalent attitude towards the presence of irregular immigrants within Spain.

6.4. Democratic Accountability and Irregular Immigration

The findings and the analysis reported here on democratic accountability and irregular migration are based on the interviews I conducted in Spain. The interviewees included a trade union representative, four scholars, two experts from the Ombudsman's office, two NGO representatives (one national and one international), a representative from an international organization, and an expert from the Secretary of State for Immigration and Emigration. A more detailed listing of these organizations is available in Appendix B.

6.4.1. Civil Society in Migration Policy-Making

My analysis of the involvement of civil society in migration policy making in the Spanish case follows a similar route to the Greek case. In order to better

understand the role of civil society in relation to the rights granted to irregular immigrants, I pose two main questions in this section in relation to the involvement of civil society on irregular immigration: first I investigate whether or not civil society is active in offering social assistance to immigrants; secondly, I ask whether or not civil society has the capacity to put pressure on the government to enhance the rights of irregular immigrants.

Concerning the first question, the findings I gathered from the interviews show that, although the Spanish state provides particular social services to irregular immigrants, there are still civil society organizations providing social assistance to irregular immigrants. For example, *Médecins du Monde* (Doctors of the World) provides free health services to irregular immigrants, while SOS Racismo provides legal counseling.

As explained in the previous section, in contrast to the Greek state, the Spanish state offers some basic social services to irregular immigrants, such as free health coverage and education. This free access to public health and education services diminishes the need for the provision of these services by civil society organizations, and civil society action in Spain on these matters is relatively less developed than in Greece. Nevertheless, as mentioned above, there are organizations that offer social assistance, especially health care and legal counselling, to immigrants in irregular legal situations. As one of the academic interviewees reported,

> [f]rom time to time it is quite common this kind of informal provide system, which I think also very common in Italy and Greece. The government for example or the local government for example they don't provide services but they pay money to NGOs to do that. So from time to time this is how things have been working for example for legal assistance - to apply for

regularizations… (Scholar-I, personal communication, April 12, 2010)

This informal provision of social services to irregular immigrants also applies to health care. The same respondent draws our attention in particular to the work being carried out by *Médecins du Monde*:

> They are going to Doctors of the World. This is for like basic assistance but this organization has like personal agreements with some Spanish doctors working in the public system so they have something not an emergency but something important, they phone to this people. … This is an informal mechanism but lots of Spanish people are against this system. But you know why? Because for example when you go to a specialized doctor, you are on the list, but when somebody phone them, to tell them there is something important, this people go and they are the first one. So everybody who was waiting is like… [disappointed]. This is one of the reasons why a lot of NGOs they are asking the governments to do something more universal because in that way people will not be against this. (Scholar-I, personal communication, April 12, 2010)

This comment forms part of a discussion on the strategies that irregular immigrants follow in cases where they cannot access the public health care system. It allowed me to understand why there are still civil society organizations working in the field as service providers, even though the state officially allows irregular immigrants access to certain public services. Another important point the respondent makes is that these services should actually be provided more universally by the state in order to prevent the emergence of antipathy on the part of Spanish people towards irregular immigrants' apparently queue jumping as a result of the current informal provision of health services. *Médecins du Monde* has personal agreements with some Spanish doctors who are working in the public system. If there were a more universal system of public service provision then such tensions would not arise. The respondent raises an important point because it highlights the fact that it is the state rather than civil society that can (or should) offer social services on a more systematic, regular and equal basis to all members of the society, since it has the

requisite human and material resources, and the organizational capacity to provide such services in an equal manner to all. Civil society, on the other hand, can only offer these services only to those manage to reach the organization, and only in an inconsistent, unequal and irregular manner, as it does not always have the necessary resources.

The discussions with the respondents raised another point that attracts attention in the Spanish case, which is the emphasis put on civil society's role in increasing irregular immigrants' awareness about their rights. Legal counselling is considered to constitute the major part of the civil society organizations' activities for irregular immigrants. Since the Spanish state already provides certain fundamental rights for irregular immigrants (in contrast to the Greek case), civil society also engages in awareness raising activities for these rights among the immigrants. The following comment illustrates this situation:

> The service we give is by one side related with aliens' legislation. How to get residence permit; how to get work permit… We inform people about the rights. We explain how to proceed; how to appeal; which documents have to be presented… (NGO representative, personal communication, April 20, 2010)

This particular organization is situated in the centre of Madrid, and the respondent explains how through their own networks immigrants learn that the organization offers these services:

> The irregular migrants that come to our office, they had been arrested because they are undocumented. So they were taken to the police station and come out from the police station with expulsion procedure. Even though they are not deported but they have this procedure. …They come to our Office to know about their rights. What they can do; because sometimes for example they have difficulties to consult to a lawyer. Because when you are arrested everybody has a right to have a government lawyer, free lawyer. Sometimes you have difficulties to contact to a free lawyer they have. Because sometimes they are not always really professional. So we are between these lawyer and person in order to put them in contact. ... But in order to generally

> inform people. We are not barristers; we are informing people about their rights for free. (NGO representative, personal communication, April 20, 2010)

The respondent feels the need to emphasise that the organization does not do the work of a lawyer or a barrister, but instead it only informs immigrants about their rights in Spain. This is important in illustrating how such NGOs are knowledgeable about the rights granted to irregular immigrants, and how they can act as intermediaries between the state and the immigrant by helping the latter to learn what he or she can legitimately demand from the former. This means that such NGOs in Spain have a significant potential to increase irregular immigrants' awareness of their rights, and about what they can and should demand from the state.

Currently, the state offers certain services on paper, but in reality not everyone is able to access these rights. The previous respondent notes, for example, that there can be some difficulties in accessing a lawyer free of charge. The immigrants' lack of information about their own rights is one of the most important obstacles to their access those rights, so civil society in Spain performs an important function in informing immigrants on their rights. One NGO representative stated that:

> He thinks he has no rights. That is important because the question is not only if irregular migrants *have* rights or no rights. They *think* that they don't have rights. (NGO representative, personal communication, April 20, 2010)

During our discussion about his trade union's work with irregular immigrants, the union representative noted that

> [t]here are more people, irregular people, coming to consult about their rights than regular people now at this moment to here [the trade union]. (Trade Union representative, personal communication, April 21, 2010)

The remark implies that it is irregular immigrants in particular who feel the

need to consult organisations like trade unions in order to learn about what rights that they can enjoy in Spain.

Thus, although the Spanish state provides relatively more rights to irregular immigrants than the Greek state, there is still a need for civil society organizations to intervene and provide social assistance. This need relates particularly to cases when irregular immigrants cannot access public social services such as health coverage, or when immigrants need legal counselling and information on their rights. To conclude this discussion concerning the first question, in the Spanish case, civil society acts as an intermediary between the state and the immigrant, but specifically in order to inform the latter on the degree to which the state recognizes or should recognize their rights.

Turning to the second question, of whether or not civil society has the capacity to put pressure on the government to improve the rights conditions of irregular immigrants, I argue, based on the interviews, that civil society in Spain is rather influential, and also that it is more influential than its Greek counterpart. The rest of this section will discuss this claim with relevant extracts from the interviews. However, before doing this, I should note that one respondent argued that civil society is less relevant than any other possible factor for the official protection of the rights of irregular immigrants:

> If you think that the social rights irregular migrants enjoy in Spain are much higher than in any other European country and that this was attained – achieved - in the 2000. You can see that NGOs there is speaking in the benefit of irregular immigrants were not very important then in the 2000. Catholic church had more to do with that than NGOs I think. But of course there were also NGOs. But the final result had more to do with sympathy feeling about immigrants than NGOs. (Scholar-II, personal communication, April 13, 2010)

The respondent's comment relates to 2000, when, as outlined in an earlier

section, a very liberal law on immigration was enacted, granting certain important social rights to irregular immigrants. Based on developments at that time, the respondent argues that this was not the result of civil society pressure, but mainly because of a "sympathy feeling" on the part of the public. Thus, this respondent rejects the idea that the Spanish government is more liberal towards these migrants because of civil society mobilization in favour of the rights of irregular immigrants. However, based on the other responses, I would still maintain that Spanish civil society, and especially its trade unions, have been rather influential over the state in matters concerning the rights of immigrants. In addition, my interview material suggests that civil society in Spain is more active during decision making on immigration than Greek civil society.

Regarding situations where Spanish civil society actively participated in, and influenced the decision-making process on immigration, my first example actually concerns regular migrants. However, the point is still relevant to the issue of irregular migration as it demonstrates how major organizations within civil society have the potential to put pressure on the government.

> The quota system is to provide foreign workers for several sectors, especially domestic service, agriculture, construction and service in general - for example in the tourism sector… In 1993, the government implemented this quota system. And this system was the result of kind of consensus between trade unions, regional governments - I mean the regions, business associations and immigrants' organisations. (Scholar-I, personal communication, April 12, 2010)

Thus, the policy-making process in Spain seems to be more open than in Greece to the participation of civil society organizations concerning migration related matters in general. One expert, who works in the office of the Secretary of State for Immigration and Emigration, notes that contact with civil society actors is a

priority of the current government, and that this is one of the characteristics of the policy-making process in Spain:

> In the case of this new government, a priority is the contact with the civil society in general. So the participation… For example in the case of immigration topics, we have spent a lot of time promoting dialogue with social agents - you know trade unions, employers associations, NGOs, experts, academia, so on. So this involves lots of actors to participate. And I think it is one of the characteristics. (Expert at the office of the Secretary of State for Immigration and Emigration, personal communication, April 21, 2010)

The same respondent justified this official position of affirmatively involving "social agents" in the following manner:

> I think that participation of civil society gives you or makes you to take account of question of fundamental rights. So maybe this kind of participation gives you a more sensitive perspective or approach to social rights topics. So very, very logical and correct if you open your dialogue and your capacity of building policies with civil society you acquire a lot of more inputs to take into consideration - you know - rights obligations and freedoms… (Expert at the office of the Secretary of State for Immigration and Emigration, personal communication, April 21, 2010)

Thus, in his capacity as an official representative of the government, this respondent praises the participation of civil society in policy-making. I also find her viewpoint important as she relates the importance of civil society's participation to a rights based discourse. That is, the respondent argues that, when civil society participates in policy-making, then the state engages in a discussion or dialogue that relates more to social rights and freedoms than it otherwise would. Thus, this argument may also be interpreted as saying that the involvement of civil society is necessary for the better protection of the rights of immigrants in general.

Another important finding from the interviews is that it is the trade unions rather than migrants' organizations or other human rights based NGOs that are the

most influential organization during the policy-making process. Almost all of the respondents confirm that, while NGOs are not very strong when faced by the government, this is not the case for the trade unions. The interviews reveal that trade unions emerge as important actors, whose opinion the governments take into account, and who are able to promote and negotiate for the rights of immigrants, including irregular immigrants. A couple of examples from the interviews can illustrate the way in which trade unions are involved in the policy-making process. First,

> the Unions are pretty powerful and very protective in favour of migrants in Spain. They are not against the migrants at all. So they protect them. So it is difficult to produce the law without taking care what the Unions says. (Scholar-III, personal communication, April 14, 2010)

Second,

> [t]rade Unions for the whole period or most of it at least have had very positive approach towards immigration. I mean their main aim was to integrate legally with the quality immigrant to the labour force I think. They have been defending the immigrants the whole period. (Scholar-II, personal communication, April 13, 2010)

This second comment also suggests another significant role of trade unions in Spain of helping to legally integrate immigrants into the labour force, which can be interpreted as positively contributing to the labour market conditions of irregular immigrants, as it helps to open the way for their right to have fair labour conditions.

The information I gathered from my interview with a trade union representative confirms this information and emphasises the influential role of trade unions concerning immigration policies in Spain. As this respondent put it, "they [trade unions] think and they fight for the social and labour rights for both: for

irregular and regular."[27] (Trade Union representative, personal communication, April 21, 2010) In addition, this respondent lists the following activities of his organization relating to immigrants: participation in the forum for the integration of immigrants in order to give proposals and make comments on the law and different aspects of integration measures for immigrants; explaining to immigrant workers all the measures taken by the government and the union's own opinion about immigration matters; distributing brochures containing information on immigrant labour; and preparing informative journals for immigrant workers. Finally, the same respondent also reported that this year, for the first time, the union has been asked by the Secretary of State for Immigration and Emigration to contribute to the work which is being carried out to prepare implementation related regulations of the existing immigration law.

Another point that emerges repeatedly during the interviews concerns the relatively more tolerant attitude towards immigrants in Spain. Respondents noted that, although Spain is not totally free from racist and/or xenophobic attitudes, there is still a much more tolerant attitude towards immigrants in Spain than some other European states. For example, judged solely from what was said in the interviews, as attitudes in Spain contrast sharply with those in Greece. However, this distinction might be exaggerated, and definitely needs further research, which should utilise comparative public opinion surveys. Bearing this caveat in mind, however, most of the respondents in the Spanish case report attitudes that respect the rights and liberties of immigrants, irrespective of their legal status. I find these comments worth quoting here, as it is important to remember that liberal constraints operate with

[27] The interview with the trade union representative was conducted in Spanish with the assistance of an interpreter. The quotations used here were translated into English by the interpreter.

either a receptive and tolerant public discourse or within an excluding and intolerant one.

> …if you compare the surveys and these things on racism and xenophobia we don't have such a high rates compared to other countries. On the contrary it is very funny when you ask people about immigrants everybody is against immigrants but not against my immigrants, people I know, and the people I met before in my district, in the school… (Scholar-I, personal communication, April 12, 2010)

According to this respondent, social interaction with an immigrant, and familiarity with immigration and/or immigrants' lives, creates a more favourable and receptive atmosphere for immigration. It indicates that, although people might be against the idea of immigration and immigrants in general, when they get to know immigrants personally, their previous general ideas on immigration and immigrants change in a positive direction. Although it was not stated during the interviews, this may also be perfectly true for the Greek case as well. However, it is also likely that such social interaction and familiarity does not always bring about a more positive attitude towards immigrants; it naturally depends on the nature of the interaction among other factors.

A further finding that also emerges repeatedly during the interviews is more specific to the case of Spain. This is that the relatively more positive attitudes towards immigrants within Spain may be an extension, or consequence of, a broader political culture which prioritizes individual rights above all other things. One example of this argument runs as follows:

> Having been deprived of rights in the past has conferred tremendous value over rights. Therefore if you ask, should migrants have the same rights? Of course they should have the same rights. For instance, you know that in Spain irregular migrants have full right to free health coverage. No one contests that… Maybe privately some people some individuals in private terms could say 'well I am unhappy because you go to the hospital and then there are plenty of immigrants you have to queue and wait' or complain some people could say, 'immigrants have more rights than we do and they are preferred

> and this is unfair' they could say that, but in public no one could say that. (Scholar-IV, personal communication, April 19, 2010)

This statement refers to the Franco regime and how living through that period has influenced the current political culture. According to this statement, Spanish people value and prioritize individual rights in general, which creates a more favourable atmosphere for the protection of the rights of immigrants.

These comments about fully respecting individual rights are also supported by the arguments of scholars. Encarnacion, for example, claims that "political behaviour in post-Franco Spain shuns political extremism, from either the Right or the Left, and emphasizes political consensus and moderation across the political spectrum" (2004: 178). A study by Triandafyllidou finds that political discourse on rights and integration is more pronounced in Spain than in Greece (2000B: 384). Based on the data she gathered from interviews with public officials, NGO representatives, and trade unionists, she argues that, in the Spanish context, "[t]he need to integrate immigrants into the reality of the host society empowering them to act themselves as cultural mediators and also the necessity for a public response to immigrants' needs for health services, schooling and accommodation are the prevalent arguments in the Spanish discourse" (Triandafyllidou, 2000B: 384). However, as already mentioned, sound conclusions about public attitudes towards immigrants in any national context require data from public opinion surveys, preferably comparative ones, that not only asking respondents if they think immigration is good or bad for their country, but also some other questions that would give a broader account of the nature of their attitudes. At present, based on the interview findings reported here, public attitudes towards irregular immigrants seem to be more positive in Spain than in Greece. However, this is just an interpretation

based solely on the opinions of a small sample of experts, although it is a valuable interpretation as it highlights a point which requires further inquiry.

6.4.2. Courts

Parallel to the questions I posed in Greece, I also asked in the Spanish context if the respondents recalled any incidents where a national court gave a favourable opinion about an irregular migrant's access to a social right. As in the Greek case, the responses of the interviewees in Spain indicated that court rulings do not appear to be an important factor pressurizing governments to revise certain measures that restrict irregular migrants' access to their social rights. On the other hand, based on the response of the experts at the Ombudsman's office, courts do get involved in the migration policy-making process through the various appeal applications presented by various civil society organizations on matters of migration in general.

> You have to think not only several NGOs who had played an important role but also a very important active group of lawyers who really has a big impact not only in the negotiating with the government but even by submitting an appeal to before the supreme court that has already changed some immigration rules. So of course it has a deep impact. In fact all these migration regulation, from the first Spanish foreigner's law in democracy was in 1985, so from this very first one to this last one I can say each one of the regulation was submitted an appeal before the court, but not only the Supreme Court by the NGO but even before the constitutional court. … The ombudsman has already presented a several appeal before the constitutional court in some things about migration. So of course it has a big impact. (Expert-II at Ombudman's office, personal communication, April 14, 2010)

This illustrates two important aspects in relation to the involvement of Spanish courts in decision-making on migration related matters. First of all, civil society organizations, in this case a group of activist lawyers, through their appeal applications bring the courts into the policy-making process. Thus, another activity

of civil society organizations is their use of the judicial system. Second, this expert's comments also reveal that, since 1985, each piece of migration related regulation has led to an appeal before a Spanish court. This suggests that the regulations on migration have been under continuous scrutiny with respect to the Spanish constitution, which itself aims to secure rights for all. Thus, one can argue that the Spanish courts are in reality an important democratic accountability mechanism on matters concerning migration in general.

6.5. Concluding Remarks

Similar to Greece also Spain has become a country of immigration starting by the mid 1980s; and since then the number of immigrants has increased considerably. In 2010, immigration constituted 14.1 % of the Spanish population. Immigrants of Spain are coming mainly from Morocco, Romania, Ecuador, Columbia, and various other Latin American countries. Similar to Greece, also Spanish territory has been used as a transit zone for immigrants who are heading to Central and Northern European countries; however adding to that more and more immigrants are coming for settlement as well. Spain attracts a considerable number of irregular immigrants as it is the case with Greece. Existing research states that Spain as well could not efficiently manage the interaction between the demand for immigrant labour in the economy and the supply of immigrant labour (Arango and Finotelli, 2009). Thus, there is a large number of immigrants, who work in low paid, unskilled jobs in the informal economy without the necessary documentation for residence and/or work. Most of the irregular immigrants enter the country legally as tourists but then overstay their visa (Serrano et al., 2009). Furthermore, "befallen irregularity"

(Gonzales-Enriquez, 2009B) is also very common in Spain where immigrants are unable to renew their work and/ or residence permits as a result of slow state bureaucracy.

On the other hand, as opposed to Greece, Spain's immigration legislation has a relatively liberal approach towards the protection of immigrants' rights in general. As a result of that Spain's immigration rules and regulation adopt a more protective approach towards the fundamental rights of irregular immigrants than the rules and regulations of Greece. Once the irregular immigrants register in local registrars (*padróns*) they could benefit from public services on the same basis as the nationals of Spain and the immigrants with legal documentation. Therefore, access to health care and education is granted to all immigrants without excluding the ones without necessary legal documentation which means the official protection of irregular immigrants' fundamental human rights is more liberal in Spain then in Greece. Up until 2003 the Ministry of Interior did not have the right to access the information within the *padróns* however as of 2003 the Ministry had been given a right to access these registrars. Nonetheless, interview findings show that the Ministry of Interior made a public statement announcing that it will not exercise this power, and the number of immigrants who are being registered in the *padróns* did not go down.

Findings of the interviews point out that there are various civil society organizations also in Spain that offer very basic social assistance to irregular immigrants, even though the state grants these services on paper. This may be interpreted as that the de facto access to these rights are inadequate though there is a de jure access. Thus, civil society services supplements the protection of rights of irregular immigrants by offering them social assistance such as health care services.

Moreover, legal counselling offered by the civil society organizations is very common in Spain. Thus, civil society activism also involves informing irregular immigrants about their rights in Spain. Additionally, like the Greek case, there is civil society activism that is protesting restrictive measures concerning immigrants' integration and supporting a better protection of irregular immigrants' rights. Not every civil society organization is very influential on the state while decisions are being taken; however interview findings point out that as opposed to the Greek case trade unions are powerful actors whose opinion state does take into account; and trade unions are supportive of immigrants' rights in general without excluding the irregular immigrants. Like the Greek case, for the Spanish context interview findings point out that it is not very common for courts to review existing legislation on immigration for enabling a better protection of irregular immigrants' rights.

CHAPTER 7

TURKEY

7.1. History of Immigration in Turkey

In terms of migration, Turkey has been considered more as a sending country than a receiving country. Turkey's role as a sending country started in the 1960s, primarily through labour emigration to Northern European countries. In particular, Turkish immigrants moved in large numbers to West Germany after Turkey signed an agreement opening the flow of Turkish labour immigrants to the country. For the two countries' governments, the two goals converged in meeting Germany's need for temporary unskilled labour and decreasing the unemployment rate in Turkey. Similar agreements were also signed with Austria, Belgium, Holland, France and Sweden. The Turkish government of the time encouraged these waves of emigration because it thought that those labour emigrants would eventually come back to Turkey, bringing the new skills that they acquired in Europe, which would in turn help to reconstruct the Turkish economy. However, the plan did not work out as expected because, instead of returning, most of the Turkish labour emigrants settled in these European countries (Kirişçi, 2007: 91). Emigration to Europe slowed down in the 1970s when European countries closed their borders to labour immigration due to

economic recession. Nevertheless, Turkish emigration to Europe continued slowly due to family reunification and family formation (Kirişçi, 2007: 91). In addition, particularly beginning in the 1980s, European countries began to receive asylum seekers from Turkey. This was mainly the result of the political developments following the 1980 military coup and the on-going Kurdish conflict, especially in eastern Anatolia (İçduygu and Biehl, 2009: 5).

Europe was not the only destination for Turkish immigrants. In the 1970s, some Turkish workers moved to the Middle East, to countries such as Libya, Saudi Arabia, Iraq, and they moved as well to the Soviet Union and to other places in the Soviet Bloc. The growing economies of these countries were a pull factor in these migrations. However, as opposed to emigration to Europe, emigration to these countries rarely involved the entire family of the Turkish worker concerned (Kirişçi, 2007: 91).

Although emigration has been one important defining character of migratory movements involving Turkish territory, immigration has also been seen to a lesser extent. Starting with the early years of the Republic, immigration of those ethnic groups, such as Bosnians, Circassians, Pomaks and Tatars, having a close relationship to Turkish culture and language, was encouraged and supported by the state (Kirişçi: 2007). One important reason for supporting the immigration of these ethnic groups was to develop the 'homogeneity' of the newly established Turkish state (Kirişçi: 2007). The countries these immigrants came from included Bulgaria, Greece, Romania, Yugoslavia, and Turkmenistan among others. For example, between 1923 and 1997, approximately 800,000 people arrived from Bulgaria, and

approximately 400,000 people arrived from Greece (İçduygu and Biehl, 2009: 4). Overall, "from the establishment of Turkey in 1923 to 1997, more than 1.6 million immigrants came and settled in Turkey" (İçduygu and Biehl, 2009: 93).

During the late 1980s and early 1990s Turkey started to receive a new type of immigration with immigrants who came to be considered as 'foreigners', in comparison to the previous 'immigrants' from ethnic groups with historical, cultural and/or identity ties to Turkish people. The new immigrants arriving in Turkey were nationals of neighbouring countries, EU nationals, and irregular transit migrants from various countries (Kirişçi, 2007: 93). Due to the economic liberalization of early 1980s and an increase in global flow of commodity and capital through Turkey, together with the development of tourism as an economic sector, the number of foreigners in Turkey increased (İçduygu and Biehl, 2009: 5-6). In addition, international developments, especially those concerning Turkey's neighbours, also contributed a lot to Turkey's becoming an immigrant receiving country. These developments included the political turmoil that developed in countries like Iran, Afghanistan, Iraq and Israel/Palestine. The earlier collapse of the Soviet Union was another development that contributed to Turkey's role as a receiving country by triggering the immigration of citizens from former Soviet Bloc countries looking for better prospects of life in neighbouring countries like Turkey (İçduygu and Biehl, 2009). Thus, "the ongoing political turmoil and clashes in neighbouring areas ... pushed people away from their homelands and toward other lands, where there [was] hope for a better life, security, and protection from persecution" (İçduygu, 2004: 89-90), and Turkey was perceived as one such country for these people.

Turkey's geographical position can also be considered as a factor which triggered the flow of immigration. The country's location between East and West, and North and South made it a transit zone for migrants heading to Western and Northern countries (İçduygu, 2004: 89-90). As a result, Turkey came to attract a large number of (transit) immigrants because of its geographical position. This has created a situation in which there are growing numbers of asylum seekers and irregular migrants staying in Turkey in order to transit to Northern European countries. Additionally, it is worth noting that the immigration policies of the European countries have also had an effect on migratory movements across the Turkish territory. As increasingly restrictive immigration policies have created the "Fortress Europe", previous migratory movements across the European continent have been diverted towards the 'peripheral zones' like Turkey (İçduygu, 2004: 90). These developments have created new movements of 'foreigners' to and through Turkish territory. As a result, since the 1990s, Turkey has been considered a "transit" and "migrant receiving" country, in addition to its more traditional role as a sender country (Kirişçi, 2007: 91).

Today, therefore, there are immigrants with many different backgrounds and various motivations residing in Turkey: for example, there are immigrants who married Turkish nationals; there are retirees and students studying at various universities of Turkey. According to OECD data, in 2007, approximately 184,000 residence permits were granted to immigrants. "Of the 175,000 residence permits granted to foreigners in Turkey in 2008, 19,000 were for work, 29,000 for study and 127,000 were granted for other purposes. … [A] vast majority of residence permits are issued to citizens from these neighbouring regions, most of whom come to join

relatives or friends living in the country, or to study and work for a limited period" (İçduygu and Biehl, 2009: 12). While most of the immigrants with residence permits continue to originate from the Balkans, former Soviet Union countries, and the Middle East as a result of close cultural and historical ties, there are now increasingly also immigrants from European countries such as Germany and France, and from the United States. For example, in 2008, the largest numbers of residence permits were granted to immigrants from Bulgaria (16,536) and the Russian Federation (10,937), while 9,909 permits were granted to immigrants from Germany and 8,490 permits were granted to immigrants from Iraq[28] (İçduygu and Biehl, 2009: 45).

A number of immigration related statistics, presented in Table 5, can help provide a better understanding of Turkey's new role as an immigrant receiving country. This information also enables a comparison of Turkey's current status as a country of immigration with Greece and Spain.

[28] These numbers are gathered from the study of İçduygu and Biehl (2009). The authors compiled a table of "Residence permits granted to foreigners in 2008" by using data from the Bureau for Foreigners, Borders, and Asylum at the Directorate of General Security of the Ministry of the Interior.

Table 5: Migration Related Statistical Information on Turkey

Population (2010)	75.7 million
Net Migration Rate (2005-2010)	-0.1 migrants /1,000 population
Immigrants as a percentage of population (2010)	1.9 %
Inflows of asylum seekers (2009)	7830
Estimates of the number of irregular foreign residents (2008)	N/A
Number of apprehended irregular migrants (2008)	65,737

Source: The data in this table were produced from multiple secondary sources: the figures in the first three lines were gathered from the International Organization for Migration (IOM) data (available at http://www.iom.int/jahia/Jahia/activities/europe/eastern-europe/turkey retrieved on 07.10.10). The data on the inflows of asylum seekers is taken from OECD-International Migration Data 2010 (available at http://www.oecd.org/document/57/0,3343,en_2649_33931_45634233_1_1_1_37415,00.html retrieved on 07.10.10). Although, estimates on irregular foreign residents data was available for Greece and Spain from the database of CLANDESTINO project, this data is not available for Turkey in this database. Finally, the number of apprehended irregular migrants comes from Kale (2009), which is a country case report of the "CLANDESTINO: Counting the uncountable – data and trends across Europe" project (2007-2009), funded by the European Commission, DG Research, Sixth Framework Programme.

When considered in comparison with the figures provided for Greece and Spain, the figures in Table 6 show that Turkey is still in the process of becoming a country of immigration; or, to put it differently, Turkey's role as an immigrant receiving country is not that developed in comparison with the roles of Greece and Spain as receiving countries. This can be realized by looking at the ratio of immigrants to natives in each country, as this number is significantly lower for Turkey than for Greece and Spain. According to the IOM data, immigrants in Turkey constitute 1.9% of the whole population, whereas in Spain they constitute 14.1% of the population and, 10.1% in Greece (IOM, Turkey, n.d.). Additionally, the net migration rate for the period 2005-2010 is -0.1 for Turkey, in comparison to 2.7 and

7.9 for Greece and Spain respectively (IOM, n.d.).

The number of asylum seekers also helps understand Turkey's changing role as an immigrant receiving country. While the number of asylum seekers leaving Turkey for European countries has been declining, the number of asylum seekers entering Turkish territory has shown an increase in the last couple of years. In 2007, there were 7,600 asylum applicants at Turkey's borders, which was 70% higher than 2006, and this figure grew to around 14,000 in 2008 (OECD, SOPEMI, 2009). In relation to the asylum issue, it should be noted that Turkey still maintains the geographical limitation[29] in the 1951 Geneva Convention so it does not accept non-European refugees on a *de jure* basis. However, because most asylum seekers currently arrive from non-European countries, Turkish authorities have been working with UNHCR in order to resettle them in other countries (İçduygu, 2004: 92).

Table 6 below shows changes in the number of apprehended irregular immigrants. Although there are problems in relying on these figures for accurately evaluating changes in the rate of apprehensions, they do give us some idea about the degree to which a country attracts irregular immigration flows. Thus, in Turkey's case, the number of apprehended irregular migrants shows a sharp decrease in 2003, especially over 2000 and 2001. Later on, this figure fluctuated around about 59,000 between 2003 and 2008. As noted in previous chapters, it is not possible to tell whether these changes are because there have been more or fewer irregular immigrants arriving at Turkey's borders, or because border controls have become

[29] The geographical limitation of the 1951 Geneva Convention granted the status of refugee only to persons who were being affected from the events occurring in Europe. This geographical limitation was lifted later on with the 1967 Protocol and the scope has been expanded to problems of displacement all around the world. Turkey has not yet accepted the removal of geographical limitation.

more or less effective. Thus, we should approach these figures with caution, and should not consider them as providing more than a general idea of Turkey's role as a target of irregular immigration flows.

Taking these figures on apprehensions from a comparative perspective, one can recall that the number of apprehended irregular immigrants at Greece's borders was 228,421 in 2000, but only 57,623 in the first half of 2008 (see table 2). In the case of Spain, there were 15,195 apprehensions at sea borders in 2000 and 18,057 in 2007 (see table 4). Although it should be acknowledged that because the data on apprehensions for each case comes from different sources, making it problematic to evaluate them on a strictly comparative basis, it can still be argued that the figures in Table 6 strongly suggest that Turkey attracts similar levels of irregular immigration flows as Greece and Spain do.

Table 6: Number of apprehended irregular immigrants in Turkey between 2000 and 2008

YEARS	TOTAL APPREHENSIONS
2000	94,514
2001	92,365
2002	82,825
2003	56,219
2004	61,228
2005	57,428
2006	51,983
2007	64,290
2008	65,737

Source: The data in this table is a copy of Table II 'Statistics for Undocumented Migration (2000-2009)' Kale (2009; 70).

As with the other cases, however, the figures for irregular immigrants

entering Turkey remain as 'estimates' derived from different sources, and vary accordingly. For Turkey, these estimates range from 150,000 to 1 million, 500,000 to 1 million, and 600,000 to 700,000 according to different studies (Kaya, 2008: 26).

Regarding the origins of these irregular immigrants, the 2003 IOM report prepared by Ahmet İçduygu found, on the basis of interviews conducted in Istanbul and Van provinces with 53 irregular migrants , that one-quarter of the sample was composed of Iranians and Iraqis, 14% was Afghanis, and the rest originated from former Eastern Bloc countries or from Africa. Most of these irregular immigrants were working irregularly in the informal economy. A large proportion of these were working in domestic services such as child and elderly care, and there were also migrants working in the construction, textiles, and entertainment sectors. As in Greece and Spain, the IOM report found that irregular migrants took those jobs that are generally turned down by the natives. However, as Turkey, in contrast to other Southern European countries, has high rates of unemployment and an excess supply of unskilled labour, irregular migrant labour in Turkey does compete with native labour to a certain extent, especially in the manufacturing and construction sectors (Toksöz, 2007).

Before ending this section, given its focus on immigration related statistics and developments, it is necessary to note that such statistics in Turkey are not yet developed (or provided) properly. As İçduygu and Biehl (2009: 8) point out, statistical data on immigration "is extremely scarce and poorly researched. With the available data in Turkey it is not possible to determine properly who emigrated/immigrated, how/why, and to/from which country". Various discussions and projects have taken place in recent years within the Turkish Statistical Institute,

the State Planning Organization, the Ministry of Interior, and the Ministry of Labour and Social Security on integrating immigration statistics with general population statistics. However, currently, the main source of migration related statistical data in Turkey is the Bureau for Foreigners, Borders and Asylum (BFBA) under the Ministry of Interior. The BFBA data primarily includes information on work and residence permits for foreigners, and also some information on numbers of apprehended irregular migrants according to their country of origin and year of apprehension (İçduygu and Biehl, 2009: 8).

7.2. A Brief Overview of Immigration Policies of Turkey

As has been stated in the previous section, Turkey's status as a receiving country is a rather new subject. Thus, international migration related categories, such as asylum seekers, refugees, labour migrants, irregular immigrants and the like, whose boundaries are usually rather blurred anyway, are very new and unfamiliar concepts for Turkish political culture. This reflects the fact that, as İçduygu and Biehl (2009) point out, the recent growth of international immigration to Turkey "did not occur as a result of active state policy. For many years, in fact, these migration flows to Turkey have been largely ignored, and there has been little discussion at state and public levels regarding both the management of these flows and, more importantly, about the integration of migrants" (7).

Turkey's main existing immigration rules were set out in the Law of Settlement (1934). This law was originally adopted primarily considering the movement of ethnic Turks, and as a result it favours Turkish ethnicity and culture over other ethnic and cultural groups. For example, the law grants certain privileges

to immigrants with Turkish ethnicity and culture, such as easy access to citizenship, whereas the rules governing the permanent settlement of other foreigners carry more restrictive elements (İçduygu, 2007A: 206). More importantly, according to Law 2510 (1934; amended in 2006), an immigrant is defined as a person of Turkish descent who belongs to the Turkish political culture. Thus, all other immigrants within Turkey are considered "foreigners" not "immigrants". It can be argued that this category of foreigner implies a temporary status and a restricted belonging, which might imply that the Turkish state rules out, by definition, the adoption of measures necessary for the integration of resident 'foreigners' into Turkish society. Therefore, against this legal jargon, when I use the term "immigrant" in this chapter it means that I refer to these 'foreigners' as well, since they are also *de facto* immigrants, despite what the law might imply.

In addition to the Law on Settlement, there are many other laws governing the rights and responsibilities of immigrants; indeed, unlike Greece and Spain, Turkey currently lacks a single specific law designed only to regulate immigration. A new law on 'Foreigners' is in the process of being drafted and may be ratified in parliament within the next year or two; however, currently it is Law 5682 (the Passport Law of 1950) that regulates the entry and exit of foreigners through Turkish territory; Law 765 (The Turkish Penal Code of 1926) that regulates penalties for forged documents concerning immigration; and Law 403 (The Turkish Citizenship Law of 1964) that sets out the terms for acquiring Turkish citizenship. Other than these, there are certain other laws that specifically concern foreigners: Law 5683 of 1950 (the Law on the Residence and Movement of Foreigners in Turkey), Law 2527 of 1981 (the Law Regarding Allowing Aliens of Turkish Descent to Practice their

Professions in Public and Private Institutions or Enterprises in Turkey), and Law 4817 of 2003 on the Work Permits of Foreigners. This latter law is the first example of the adoption of systematic legislation specifically concerning the settlement of immigrants in Turkey (Kaiser, 2007). It has liberalized to some extent the previously very restrictive process of granting work permits. However, it still does not give immigrants the right to a permanent work permit. Rather, the law only states that immigrants who have resided in Turkey for eight years continuously, or who have worked legally for a total of six years, *may* receive a work permit without consideration of the situation of the labour market and developments in working life, and without the restriction of the permit to a specific enterprise, occupation, ownership or geographical area (Article 6). However, Article 13 states that immigrants are still not allowed to practice certain occupations, such as being a medical doctor, pharmacist, nurse or pilot, among others. Under these circumstances, most immigrants find it impossible to finance themselves within the law by their own labour. For example, in mixed marriages when the Turkish spouse cannot provide for the couple's living costs for some reason, the subsistence of the family is threatened. Similarly, in case of divorce, immigrant partners face certain restrictions in terms of their continued residence and work permits, and may even be forced to leave Turkey (Kaiser, 2007: 480-1). In conclusion, it is fair to say that, an immigrant does not enjoy his or her rights as much as a national (Kaiser, 2007).

Regarding asylum, Turkey's first national regulation (other than its adoption of related UN conventions) was implemented in 1994. "Regulations on the Procedures and the Principles related to Mass Influxes and Foreigners Arriving in Turkey or Requesting Residence Permits with the Intention of Seeking Asylum from

a Third Country" introduced rather restrictive provisions to the management of the country's asylum system. For example, non-European asylum seekers were originally allowed only five days after arrival to register themselves with the Turkish authorities, before being subject to deportation although this requirement was later lifted (İçduygu and Biehl, 2009). At the time of writing, the current government is preparing both a new Foreigners Law and a new Law on Asylum, which is intended to provide a smoother mechanism to process asylum applications, and to better protect the rights of asylum seekers.

Turkey is thus in the process of adopting new laws both for immigration and asylum so we can expect to see new policies and enforcements in the near future in relation to these issues. During a conference held in January 2011, the Deputy Undersecretary of the Ministry of Interior, Zekeriya Şarbak, noted that policies concerning immigration and asylum have been mainly concerned with security and order; he claimed, however, that his government is well aware of the legal and human rights dimensions of the matter, and predicted that, with the adoption of new laws on immigration and asylum, concern for these dimensions would become dominant.[30] The proposed law, currently named *the Foreigners and International Protection Law Proposal Draft*, has already been made public through the website of the Migration and Asylum Bureau[31]. In the draft law, the term "foreigner" now refers without discrimination to any person who is not a citizen of Turkey, and the term "international protection" refers comprehensively to refugee, "conditional refugee", or "secondary protection" statuses. "Conditional refugee" status is given to refugees

[30] "*Turkey's Historical Tradition of Asylum: Past Practice and Future Application in the Context of Developing Legal Frameworks*", Second Academic Network Seminar, 6-7 January 2011, Ankara, organized by UNHCR.

[31] Müsteşarlık İltica ve Göç Mevzuatı ve İdari Kapasitesini Geliştirme ve Uygulama Bürosu, Retrieved October 26, 2011 from http://gib.icisleri.gov.tr/default_B0.aspx?content=1

from non-European countries, indicating that Turkey in a sense still adopts the geographical limitations of the 1951 UN Convention on refugees. "Secondary protection" status is given to those asylum seekers not given refugee or conditional refugee status, but whose refoulement to their country of origin carries serious risks to their physical integrity. That is, it appears that the Turkish state intends to adopt for the first time a law which will govern the status of immigrants, asylum seekers and refugees in a systematic manner. However, it is not yet clear whether or not it is justifiable to agree with the Zekeriya Şarbak's optimism, because this depends on what kind of comparison one makes. That is, while it is true that the new law, as a single and consistent document on immigration and asylum, may better serve the rights and liberties of the people involved by preventing the arbitrary decisions that can occur in the absence of a single legal framework, when one compares the Turkish government's draft law to the analogous legislation in Greece and Spain, one can observe that the former is rather less developed regarding rights and liberties than it is regarding the obligations of immigrants and asylum seekers. I will elaborate more on how this situation relates to the rights of irregular immigrants in the next section; however, before doing this it is necessary to describe the broader framework as well.

The second and third chapters of the draft law govern the conditions of foreigners and subjects of international protection. The general themes of the articles relating to foreigners concern entry and exit to the country, visas, residence permits, deportation and deportation centres. That is, there is no general article or section that specifically regulates the rights of foreigners, neither is there any reference to any regularization program or policy, although the section on long term residence permits

(Article 44) does state that long term residence permit holders can enjoy rights on the same basis as Turkish nationals. On the other hand, in the third chapter on international protection, there is a separate section (Articles 86-88) that governs the rights and obligations of the subjects of international protection. These three articles regulate asylum seekers' access to public education, social security and health services, and also govern the condition of irregular immigrants, as will be outlined in the next section.

Before the draft law proposal was made public, the government's policy-makers distributed the titles of the articles of the draft law to those members of Turkish civil society and academia who work in fields related to migration, asking for their comments. This issue, of the way in which the new law has been prepared and the extent to which civil society has been able to participate in the process, is discussed fully in the fourth section of this chapter; however, I would like to note here that state officials have been stating, for example in various seminars and conferences on immigration and asylum in Turkey, that the new laws are being prepared in response to the comments received from various EU and civil society actors, which also includes academics in a rather transparent process.[32]

Regarding the Turkish state's motivations for introducing this new law, there appear to be several influences. On the one hand, the country feels the need to regulate immigration and asylum more and more because of its growing role as an immigration and transit country in the region. On the other hand, the "push impact" of the EU accession process is also a significant factor in the process of developing a new law. That is, the push impact of "conditionality" means that European

[32] One such seminar is titled, "*Turkey's Historical Tradition of Asylum: Past Practice and Future Application in the Context of Developing Legal Frameworks*", Second Academic Network Seminar, 6-7 January 2011, Ankara, organized by UNHCR.

integration is having an important influence on migration-policy making in Turkey (İçduygu, 2007A). Although the impact of Europeanization is quite moderate in the sense of not bringing about "paradigmatic change", it is nevertheless becoming an increasingly stronger influence over time (İçduygu, 2007A: 217)[33]. More specifically, through the Accession Partnership Document and multiple Progress Reports, the EU requires certain measures in relation to immigration that Turkey must align its national policy before it can gain accession to the Union. In simple terms, these measures concern matters such as visa policies, border control and management, the fight against 'illegal' immigration, the establishment of removal centres, the fight against human trafficking and smuggling, improvement of cooperation and coordination between the EU and Turkey, preparations for Turkey's implementation of the Schengen system, improvement of management strategies for asylum matters, especially the abolition of geographical limitations, and the signing of readmission agreements with the EU and other countries. Turkey's willingness to tackle these matters identified by the EU, and its responses have been monitored and evaluated through the National Program of Action for the Adoption of the EU Acquis of 2001, 2003 and 2008, and also through the National Action Plan for Asylum and Migration of 2005. In short, apart from other influences, Turkey's soon to be enacted foreigners' law, which will be its first, is clearly being conceived in relation to the EU demands resulting from the dynamics of the accession process.

[33] For a detailed research review of the Europeanization literature on Turkey see Bolukbasi et al. (2010). For a detailed review of Europeanization of irregular immigration policies of Turkey see Ozcurumez and Şenses (2011).

7.3. Irregular Immigration Policies and Rights of 'Irregulars' In Turkey

As has been mentioned in the first section, irregular immigrants arrive in Turkey from diverse countries. First, there are immigrants from Eastern Europe coming to Turkey for work. For example, Moldovan immigrant women mostly work as domestic workers taking care of middle and upper class families' children or elderly relatives. Second, there are transit immigrants from Middle Eastern countries such as Iran, Iraq, from Asian countries such as Pakistan, Sri Lanka and Bangladesh, and from African countries such as Congo, Nigeria, and Somalia, who are all heading for European countries and using Turkish territory as a transit zone (İçduygu, 2003: 17-8). From another perspective, irregular migration flows into Turkey are conceived of as including diverse, but also overlapping categories. İçduydu (2003), for example, classifies irregular immigrants as illegal entrants, visa overstayers, and rejected asylum seekers. This classification is almost identical with the classification of irregular immigrants in Greece and Spain, where there are also, as discussed in earlier chapters, irregular immigrants whose status shifts back and forth between 'legality' and 'illegality' through various regularization programs.

As Turkey has not yet adopted specific legislation concerning immigration, the current system concerning the rights of foreigners does not directly regulate whether or not irregular migrants who are already within the country can access various social services, such as health care and education. In the draft Foreigners Law, however, there are three articles (86, 87 and 88) that respectively regulate asylum seekers' rights to public education, social assistance, and health services. According to the draft law, irregular immigrants who have already made their applications for a refugee status will be able to gain access to public education on the

same basis as Turkish citizens, asylum applicants will also be able to enjoy social assistance if they are in need, and applicants will have the right to ask for public health services within the framework Law 5510 of 2006, the Law on Social Insurance and General Health Insurance. I explain the related clauses of Law 5510 below. However, there is an additional clause of Article 88, which declares that, once the state recognizes that an asylum application has been made solely for the purpose of benefitting from public health services, then the state has the right to ask for compensation for that applicant's treatment and medical expenses. This clause clearly underlines the state's intention that public health services are to be granted only to asylum applicants, but not to irregular immigrants, who might have applied for asylum merely for the sake of benefitting from these services.

In addition, various other laws and regulations also govern irregular immigrants' access to public health care and education. First, Law 3294 of 1986 (The Law on the Encouragement of Social Assistance and Solidarity) opens the way for immigrants to receive social assistance. In According to Article 1, social assistance services (health, education, shelter, food and clothing) is to be provided to all disadvantaged groups, including people who have entered Turkish territory in whatever way. Thus, in theory, regardless of holding a residence permit, a migrant may apply to the Social Assistance and Solidarity Foundation (SASF) for social assistance. Second, a regulation called "Principles on the Implementation of Health Assistance Programs" was introduced by the Social Assistance and Solidarity Foundation in 2005 in order to "cover the health costs of poor and vulnerable persons who have no social security, including foreign nationals" (İçduygu and Biehl, 2009: 31). Under Section 7.7, "[h]ealth costs of foreign nationals" in Turkey, whether they

hold a residence permit or not, were included under the funds offered by the Social Assistance and Solidarity Foundation.[34] However, with the adoption of a new law on general health insurance, Law 5510 of 2006 (The Law on Social Insurance and General Health Insurance), health insurance is now provided to specific categories of foreigners, in particular those who have been granted refugee status by the Ministry of Interior (Article 60c/2), stateless people (Article 60c/2), and foreigners with a residence permit if they are not being covered by the social insurance program of another country (Article 60d). The implementation of this law means that immigrants without a residence permit were taken out of the health coverage provided by state. Later on, however, in May 2009, as a result of new legislation contained in Law 5510, General Directorate of Social Assistance and Solidarity issued an internal directive describing the applications concerning foreigners' access to social security. This directive excluded all foreigners covered by Law 5510 from the funds of the SASF; however, it did include in its application area asylum seekers applying for refugee status, victims of human trafficking and apprehended irregular immigrants.[35] According to the law, these immigrants "may apply for the SASF for health assistance as well, yet only for medication costs related to outpatient treatment" (İçduygu and Biehl, 2009: 32). To conclude, current legislation in relation to foreigners' access to social assistance services does not allow irregular immigrants access to such services and, most importantly, to health coverage unless they are identified as victims of human trafficking and/or have been apprehended. That is, no

[34]"Sağlık Destek Yardımları Program Uygulama Esasları", 2005/1, Sosyal Yardımlaşma ve Dayanışmayı Teşvik Fonu, Retrieved January 25, 2011 from www.e-vakif.com/download/SaglikDestekYardimlari.doc

[35]"Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu" Kanun 5510, 2006, Retrieved January 25, 2011 from http://www.sgk.gov.tr/wps/wcm/connect/c71ae3004e2b80d1b683beb00c7ce123/5510.pdf?MOD=AJPERES

part of the irregular immigrant population currently has the right to health care within Turkish territory.

In contrast, when it comes to education, attendance of primary school is obligatory in Turkey and open to everyone, with this right being protected by many laws and directives, including the Turkish Constitution (article 4). However, migrant children need valid residence permits to enrol in schools, and even if schools are willing to accept the children of irregular immigrants as "guest students" under special conditions with the agreement of the school principal, these children cannot receive a diploma to mark the end of their education (İçduygu and Biehl: 2009). Therefore, irregular immigrants and their children lack full access to right to education as well as to health services.

7.4. Democratic Accountability and Irregular Immigration

In this part of the chapter, as in the chapters on Greece and Spain, I analyse the part played by the two democratic accountability mechanisms on the protection of the rights of irregular immigrants. Based on the information provided in the in-depth interviews, I analyse the extent to which civil society organizations and courts have been able to contribute to irregular immigrants' access to their fundamental rights. The interviews for the Turkish case were conducted in Ankara and Istanbul in June and July 2010. I interviewed four academic researchers, five representatives of NGOs (four national and one international), and one representative from an international organization. All of the interviews, except one (the international NGO representative), were conducted in Turkish. Therefore, contrary to the Greek and Spanish cases, all quotations from the interviewees provided below are not their own

words, but are direct translations into English.

7.4.1. Civil Society in Migration Policy-Making

In relation to the involvement of civil society in immigration policies, the picture that emerges from the Turkish context is rather different from that in Greece and Spain. As already discussed in the two preceding chapters, in Spain and Greece, civil society is active as an intermediary between immigrants and the state, in working for the cause of the former against the latter. However, in the Turkish context, civil society's involvement in immigration related matters is not very developed, and there are few actors in civil society working to support the human rights of immigrants in general and of irregular immigrants in particular. The respondents explained this situation mainly by referring first to the fact that Turkey is not a fully developed country of immigration yet, and for that reason immigration is not an issue high on the political agenda. As a result, civil society in general is indifferent and ignorant on matters concerning immigration. A few example comments can illustrate this point:

> Turkey is not a country of immigration. Canada is a country of immigration with 20%; Britain is a country of immigration with circa 13%; the US with 12.9% if I am not wrong. Same for France and Germany with similar figures… However, the ratio of immigrants in Turkey is 0.3%. This figure also indicates how immigration related problems are perceived and how it should be perceived. (Researcher-I, personal communication, June 9, 2010)

> The fact that there are not very many civil society organizations providing social assistance to the [irregular] immigrants has many reasons but one main or general reason is that the immigration issue has not yet entered into the political sphere and it is not being discussed, heard… I mean the immigration issue is very new, and for that reason civil society did not have any interest until today. (NGO representative-I, personal communication, June 10, 2010)

Thus, the relatively small amount of attention on the part of civil society to matters concerning immigration is explained by reference to a political atmosphere within which immigration has not developed as a critical political issue. In addition, irregular immigration in particular is also a "new" concept within the political and civil spheres of Turkish society. Currently, the debate over irregular immigration in civil society carries on in a confused state, without consistent definitions and concrete understandings of the term. The information I gathered from interviewees in the three countries suggests that this is a rather different situation from that in Greece and Spain. In particular, in these countries, there is a clear understanding within civil society of who is or is not an irregular immigrant. As one respondent described it,

> matters related with [irregular] immigrants are always discussed during advocacy activities and work within civil society among the members. And yes, we vocalise these discussions as well. We agree on a discourse/vocabulary. However, still within some civil society organizations people can still use the term illegal immigrant, as if a human being could ever become illegal. Thus, there is not much thought and enlightenment on these issues yet within the civil society environment. (NGO representative-I, personal communication, June 10, 2010)

This respondent's complaint clearly exemplifies the situation, illustrating that there are different points of view within civil society on how to define and perceive irregular immigrants. It can also be interpreted to mean that civil society organizations are yet to experience the phrase of thinking through and conceptualizing matters concerning irregular immigration, and that there are certain tensions among such groups during theoretical discussions in relation to irregular migration. These disputes seem to concern, specifically, the normative position to take towards the issue of whether or not the presence of irregular immigrants within the country should be considered as 'illegal'. In contrast, during the interviews I

conducted in Greece and Spain, I did not come across any mention of such disputes in civil society on the normative positions taken towards irregular immigrants. In both countries, I got the impression that civil society agrees on the idea that irregular immigrants form a vulnerable group in the society. The experience of the Turkish respondent quoted above, however, implies that certain civil society organizations in Turkey have not yet fully recognised irregular immigrants as a distinct and disadvantaged group. At the same time, most of my Turkish respondents noted that civil society organizations are currently in the process of developing actions on immigration related matters in Turkey, because, as the statistics suggest, the country has been facing more and more immigration movements across its territory, and also because the state has started a process of adopting new legislation on immigration. We may therefore expect that these developments will also encourage a more coherent and clearer position towards irregular immigrants in pro-migrant civil society organizations.

Although in the course of the interviews my interviewees revealed that the current state of being of civil society is rather different in Turkey from Greece and Spain, I continued to pose the same interview questions to Turkish respondents for the sake of gathering comparative information. Thus, for the Turkish context I inquired about civil society's actions concerning irregular immigration in terms of providing social assistance to these people, and about their lobbying of state authorities on matters concerning the rights of irregular immigrants.

In order to gather information on the social services provided to irregular immigrants, I asked how irregular immigrants in Turkey can meet their basic needs, such as for food, shelter, health and education, and also whether there are any

organizations within civil society that help these immigrants meet such needs. My findings from the interviews indicate that Turkish civil society's provision of social assistance concerning health care, education and legal advice to irregular immigrants is very poor, in fact almost non-existent. Some work is going on currently, especially within recently established leftist civil society organizations of migration, in order to create more awareness about irregular immigration, and also to develop social assistance for these groups by, for example, attracting the attention of relevant occupational groups like doctors; apart from these activities, however, at the moment, recognition of irregular immigrants as a vulnerable group, and the provision of social assistance for them has certainly not yet developed to the extent that it has in Greece and Spain.

This is not to say that there is no help for immigrants; rather, as the following comment illustrates, it is particularly irregular migrants who lack support:

> There are not very many civil society organizations providing social assistance and consultancy yet. The ones that provide such services are mostly working in 32 satellite cities, which are identified by the Ministry of Interior, and they offer their services to asylum seekers with a residence permit. However, we have to separate illegal [*sic*] migrants at this point. First of all, there are problems in reaching those people who have been apprehended as illegal immigrants. As result, as civil society organizations cannot reach those illegal immigrants, these organizations also cannot provide any social assistance to these people. (NGO representative-IV, personal communication, July 9, 2010)

This comment is important because the respondent clearly indicates that it is mainly officially recognised asylum seekers for whom civil society organizations provide assistance. Thus, Turkish civil society makes an important practical distinction between an asylum seeker and an irregular immigrant. Additionally, the respondent highlights that it is not possible to reach apprehended 'illegal'

immigrants, even if an organization wishes to offer them social assistance. This distinction between an asylum seeker and an irregular immigrant came up quite a lot during the interviews in Turkey, particularly in discussions concerning the assistance provided to immigrants. For example,

> [i]n Turkey, from the civil society perspective, everyone is concerned with the asylum issue. There is no undocumented migration. Undocumented migration is a topic that is not discussed and for which there isn't any service being provided. (Scholar-III, personal communication, June 9, 2010)

This admission makes it clear that the recognition of irregular immigrants as a disadvantaged and vulnerable group has no practical reality in Turkey yet. In contrast, asylum seekers are recognized more frequently as a disadvantaged group and their situation creates more concern within civil society. As a result, civil society organizations mainly provide their services to asylum seekers. The following comment highlights a further problem preventing these organizations from helping irregular migrants:

> It is not possible for civil society organizations to systematically become part of the procedures related with the illegal immigrants. For that reason, it is not possible to talk about the social services provided to illegal immigrants. On the other hand, there are nearly 15,000 people as asylum seekers and refugees, whereas we know that a minimum of 65,000 people are being apprehended as illegal immigrants every year. Some of those people who have been apprehended are being sent to the origin country as they receive an illegal immigrant status, others receive asylum seeker status. Only when these people are considered as asylum seekers can we work for their access to certain social services. This means that they are out of the illegal immigrant status and they have the application of asylum. Thus, the help provided does not count as social services offered to illegal immigrants. (NGO representative-IV, personal communication, July 9, 2010)

For this particular respondent, the legal status of an immigrant is important for civil society organizations providing social assistance. Specifically, only when an apprehended irregular immigrant is officially recognized as an asylum seeker can the

organization help that person. Otherwise the organization will be deemed to be offering help to an 'illegal' immigrant, which is an act the organization does not seem to be willing to do. I should not, however, assume that this respondent's attitude can be generalized to all pro-migrant civil society organizations, and in fact there are some voluntary organizations already providing small-scale localized assistance to irregular migrants:

> In Aksaray there are Muslim Senegalese groups, who are illegal [*sic*]. There is a mosque association helping out these immigrants. There, there is also a craftsman who sells a 3-4 lira meal at a cheaper price to immigrants. So, this person provides the meal only for 1 lira to these immigrants. On the other hand, there is a church in Beyoğlu, and illegal [*sic*] Nigerian immigrants receive social assistance from this church. (Researcher-I, personal communication, June 15, 2010)

Thus, it seems that in areas where immigrants are gathered in relatively larger numbers, certain voluntary groups or private individuals have appeared who are willing to provide small-scale social assistance to irregular immigrants. Nevertheless, one clear conclusion from the interviews is that there is relatively more civil society assistance being offered to asylum seekers and refugees than to irregular immigrants. In short, irregular immigrants in Turkey lack both formal rights to access basic public social services, and also remain unsupported by any organized or systematic social assistance on the part of civil society. Another useful summary of the current state of affairs was provided by one NGO representative when I asked if there are any civil society organizations providing assistance to irregular immigrants:

> There are in Istanbul. It is said that there are very many Armenian people; it was on the news. They help these people. Especially the churches help a lot. There are children of economic immigrants. These children needed to be educated and receive special courses. Let's call them voluntary organizations; they are not proper civil society organizations as well. These organizations provide education for these children and some food help as well. However, as these people by definition have the status of illegal immigrant, registered and

> direct assistance to those people… in the end, service providing NGOs could be blamed for providing help to smugglers or traffickers. (NGO representative-IV, personal communication, July 9, 2010)

This response indicates one reason why civil society in general is rather reluctant to offer certain social services to irregular immigrants. That is, it may be the case that the civil society organizations keep their distance from irregular migrants in order to avoid becoming associated with human smuggling and trafficking. This reluctance can also be explained by referring to relations between the Turkish state and civil society organizations. I infer from the comment above that civil society organizations may also be afraid of causing any confrontation with the state by providing assistance to irregulars. This fear was emphasized by other respondents. For example, one reported that

> [y]es every discussion is held around the issue of asylum because the state drives them [civil society organizations] into that corner. The state does not allow it, so what is it to work on undocumented migration… Undocumented by definition means nonexistent on paper. Thus, the state does not accept working on it, supporting it or financing it. (Scholar-III, personal communication, June 9, 2010)

Therefore, one explanation for the lack of attention to irregular immigration on the part of civil society organizations stems from the attitude of the state towards the issue of irregular immigration in general. As the state does not recognize the existence of irregular immigrants, it also closes off ways of working on irregular immigration or for irregular immigrants.

Regarding civil society's assistance to irregular immigrants, a final point that emerged from the interviews seems to be particular to the Turkish case, as it did not come up in the interviews conducted in Greece or Spain. This is that, some of the respondents indicated that the social context does not encourage civil society

organizations to develop their efforts to offer social assistance, whether to irregular immigrants or even to asylum seekers and other foreigners within Turkey. They reported that there is an exclusionary and discriminatory social atmosphere within which civil society efforts towards alleviating the social situations of 'foreigners' is perceived as misplaced, as there are Turkish people in need who, the critics suggest, should be receiving assistance in the first place. For example, one of my respondents notes that when they visit municipalities in order to increase awareness and to offer help, the reaction they receive trivializes or deemphasizes what they aim to accomplish. The reactions come in the form of questioning why people should try to help foreigners when 'we' (Turks) have lots of 'our own' deprived and destitute citizens (NGO representative-IV). In a similar manner, another respondent notes the following:

> One common response that we hear in the field a lot is that Turkey has lots of 'poor' of its own. Turkey could not solve the problems of its own poor. These poor people also could not receive proper health services when they go to hospitals. This kind of attitude is unbelievably high in Turkey. We are a country with a very nationalistic point of view. According to which parameters can you compare an Afghan child and a Turkish child on the street? How can you decide on something like I am going to help this one but not the other one? But people think that Turkish citizenship is a priority. (NGO representative-I, personal communication, June 10, 2010)

This kind of attitude that civil society organizations face in the social sphere where they pursue their work is an obstacle making their work more difficult, and also hinders the development of social awareness of the vulnerable position of immigrants. If nothing else, it creates a psychological atmosphere within which the organization has to continuously defend its exclusive commitment to 'foreigners' and its choice of 'not prioritising' Turkish citizens.

When it comes to the second question, about civil society's lobbying of the

government for the protection of the rights of (irregular) immigrants, in the Turkish context there is again only rather limited activism in comparison to Greece and Spain. As civil society's awareness on immigration developed very recently in Turkey this has also affected the current level of rights advocacy by civil society organizations against state policies. As a result, as with the social assistance provided to irregular immigrants, the pressure that these organizations are able to put on government on matters concerning the humanitarian conditions of irregular immigration remain rather undeveloped. One NGO representative made the following comments about difficult relations with the state as part of a discussion focusing on the extent to which civil society organizations participate in the policy-making process on immigration in general, and whether or not policy-makers consult these organizations during the decision-making process.

> The current situation is much better. Two years ago things were much worse. There wasn't any communication [between the organization and the state] and the doors were closed. We didn't have any connection at all with the Ministry of Interior. Especially after the publication of a report on foreigners we experienced a total 'blacklisting'. Even though, through various press releases, we declared that we are in this business and that we are an important actor, the doors were closed to us for a long period. For example, these new reception centres are being established and there have been discussions and meetings going on; however, we didn't get invited to any of these on purpose. Then other rights based civil society organizations also declared that they are not going as well and that they could not accept such a blacklisting. (NGO representative-I, personal communication, June 10, 2010)

Although, of course it is not possible to generalize from this single example concerning the nature of the relationship between the state and organizations, still it hints at a general pattern that may have developed in the relationship between civil society organizations and the state. In other words, with the publication of a dissident report, the relationship between the civil society organization and the state

deteriorated and the organization was excluded from the policy-making process. This, and similar responses by the state, directly prevents civil society's involvement in the policy-making process. The respondent also underlines that the organization kept maintaining that they are an important actor in the field whose opinion should be taken into account. Yet the state was reluctant to consider these demands. Thus, based on this experience, I infer that at the time there was a certain system of relations between the state and civil society organizations that can be characterized by tension and closure to the diverse and critical ideas of Turkish civil society. On the other hand, other information given in the interviews also suggests that this system of relations between the state and civil society organizations appears to have been changing very recently, albeit in a slow and modest manner. The following report better illustrates these current developments regarding state and civil society relations on matters concerning immigration:

> Currently, during the preparation of this new asylum and immigration law, there has also been a new formation within the Ministry of Interior. A new office has been established in order to work on this matter and inspectors have been hired. These people did very detailed research, observed the problem and discussed with civil society organizations as well; and it was their group that prepared the draft law, and I can say that we have good communication with them. They forwarded the titles of the draft law to us; not the content, but only the titles. However, we gave a twelve-page suggestion on these titles, even if we haven't seen any content. This was a step forward towards us and we didn't want to take a step back. (NGO representative-I, personal communication, June 10, 2010)

This narrative indicates that the state has increasingly started to consider civil society opinions in the policy-making process. In support of this conclusion, this change in the attitude of the state towards the civil society participation was raised by almost all of the respondents. As I described previously, currently policy makers are

working on Turkey's very first immigration and asylum law, which is expected to be enacted either in 2011 or 2012. During the preparation of these laws, the information from the interviews, such as the comments above, suggest that policy makers are now engaged in dialogue with civil society organizations. Various other respondents also noted that policy makers sent the article titles of the draft law to certain civil society organizations in order to receive feedback. That is, currently, policy-makers seem to be including as many of the stakeholders as possible in the drafting of the new law. However, it is not possible to identify right now to what extent the concerns and comments of these civil society organizations will be included in the final version of the law. Nonetheless, the developments in late 2009 and 2010 suggest that the voice of civil society is being heard more and more in the drafting of the new law.

One final, and important point that emerges from the interviews concerning the participation of civil society organizations in the Turkish context, is that there is not such a diversity of types of organizations on immigration operating within Turkish civil society as there is in the case of Greece and Spain. The organizations working on this matter in Turkey are mainly the ones focusing specifically on asylum matters, together with a couple of human rights organizations which are either solely focusing on the rights of immigrants, or are also focusing on immigrants among other disadvantaged groups. In contrast to Greece and Spain, Turkish trade unions have not become active participants on any issue concerning immigration so far, and do not act as significant stakeholders on matters concerning irregular immigration either, as shown by the following remarks:

They [trade unions] are not knowledgeable on these issues and they do not

> have any sensitivity as well. I mean they saw the issue independent of their area of operation. One reason for this is because trade unions have a very limited relation to the informal economy or informal employment and they are not organized in that area. When I say this, I mean they do not have much access to the informal enterprises that exist within the sector they are organized in. Or, when they make efforts to get organized in this area, most of the time the result is the closing down of the enterprise and the workers become unemployed. (Scholar-II, personal communication, June 18, 2010)

This explains why irregular immigration and the irregular, i.e. informal, employment of immigrants remains outside the scope of trade union attention. The fact that trade unions are not organized in the area of the informal economy and employment automatically leaves irregular immigrants out of their area of activism. On the other hand, there are efforts to catch the attention of trade unions on matters concerning immigrants. For example, one of my respondents informed me that her organization regularly contacts health sector trade unions in order to increase their awareness on matters concerning immigration (NGO representative-I, personal communication, June 10, 2010).

Similarly, there are almost no migrants' organizations operating within Turkish civil society for the cause of immigrants. When asked about migrants' organizations, respondents note that they are very few, and most of those that do exist are informal networks organized mainly by irregular African immigrants (NGO representative-I, personal communication, June 10, 2010). The state refuses to interact with these organizations under any circumstances.

When it comes to public attitudes towards the issue of immigration, my respondents argue that a coherent and cohesive pattern has not developed yet in the Turkish context on matters concerning immigration in general, let alone irregular immigration in particular. For example, some respondents claim that general public

is not xenophobic, whereas others spot some degree of xenophobia in the country.

> I don't think that public opinion has awareness on irregular immigration. In the places where these people (immigrants) are present there is awareness, but this awareness is not very pleasant. Racist and xenophobic… Because I think in Turkey there is a certain xenophobia at the societal level. … I am of the opinion that in Turkey, there is a negative prejudice against the foreigner, non-Muslim or against a person who is not alike, who is different. (Scholar-I, personal communication, June 9, 2010)

According to this respondent, in areas where immigrants are common, one cannot speak of unawareness or indifference on the part of the public. Rather, the public is aware of immigrants, and adopts attitudes that are not very responsive or inclusive towards them to a degree that can be described as racist and xenophobic. Additionally, according to the respondent, this xenophobia at the societal level targets not only immigrants but also all 'others' whose various characteristics are different from those of the majority's. It indicates that there is a larger framework governing attitudes concerning "us and them" in the Turkish context that also targets immigrants. However, as I also noted regarding the Greek and Spanish cases, one cannot reach a sound conclusion concerning the overall nature of public opinion towards immigration and immigrants without undertaking large-scale comparative surveys that evaluate the issue in a more detailed manner.

Most of the respondents argued that, in the Turkish case, immigration on the whole is not at the top of the public's agenda, and that in fact the Turkish public's overall opinion on irregular immigration is currently strongly influenced by media coverage of sunken boats and the migrant victims of such events, as the following illustrates:

> The media is neither interested nor informed on the issue [of irregular immigration]. When some people are drowning or when a lorry turns over and people get injured, then the issue appears on the news, and when it does it is misrepresented: These people are represented as criminals who have been

> caught. Very few media organizations are careful while covering this kind of news. There is not any proper consciousness of the fact that these people are human beings who have rights and that border crossing cannot be a reason for detention. Consequently, the public's level of awareness is the same as well. (NGO representative-I, personal communication, June 10, 2010)

This comment suggests that developing a broader and more coherent public attitude towards irregular immigration will mainly rely on improving media coverage of illegal border crossings and the consequent human casualties of these actions. Meanwhile, conducting a focused survey in those areas where irregular immigrants are concentrated would be a useful first step to provide a more reliable picture of public attitudes towards irregular immigrants.

7.4.2. Courts

In order to evaluate the courts' role as another democratic accountability mechanism with the potential to protect the rights of irregular immigrants, I asked the respondents if they could recall any incidences where a Turkish national court had given a favourable opinion about the protection of an irregular migrant's rights. As in Greece and Spain, so also in Turkey, the information provided in the interviews leads me to conclude that judicial oversight and review does not emerge as an important push factor that might pressure governments to revise certain measures that restrict irregular immigrants' access to their fundamental human rights. In Turkey, the respondents could not think of one single case where the courts had blocked the emergence or implementation of a restrictive measure relating to immigration.

On the other hand, in the case of Turkey, international courts, such as the European Court of Human Rights, have become an important democratic

accountability mechanism, especially on matters of asylum and refugees. The European Court in particular is able to impose significant pressure on Turkish policy makers, especially during the process of Turkey's attempt to gain accession to the European Union. Both state officials and the government feel the need to meet the requirements of the Court, and also to prevent any other contrary decisions. One respondent provides a description of how the European Court of Human Rights has got involved in the process of immigration-related decision making in Turkey.

> Especially, applications to the European Court of Human Rights (ECHR) made in the previous years were also effective. There was already the intention to enact an asylum law. However, the seriousness of this issue was clarified with the punishments and decisions of the ECHR, and with the damages it imposed on Turkey. In this tiny office [of the NGO], we made maybe around 25 ECHR applications in this last year. As the ECHR holds the opinion that Turkey does not obey international norms, they reached their decisions very easily. However, these are interim decisions; there are seven final decisions. They are not all our applications. There are a couple of other lawyers; there is an organization in the United States, called something like the Iranian Refugee Alliance, they also have couple of applications. But all these were effective. (NGO representative-I, personal communication, June 10, 2010)

Thus, similar to the Greek and Spanish cases, the national courts in Turkey do not emerge as significant liberal constraints on the decision-makers on matters concerning the rights of irregular immigrants. However, this conclusion again derives solely from the information provided in the interviews. It is clear from the interviews that the experts on immigration interviewed for this study do not consider the national courts as effective democratic accountability mechanisms in practical terms at the moment.

7.5. Concluding Remarks

Immigration to Turkey is a much more recent development when compared to immigration to Greece and Spain. Similar to Spain and Greece, also Turkey has

started to receive immigrants in the 1980s and 1990s; however immigrants constituted only 1.9 % of the total population in 2010. Adding to that net migration rate is still negative in 2010 which means there are more people emigrating than the ones immigrating to Turkey. Nonetheless, the number of immigrants and asylum seekers has been increasing, especially in the 2000s. Turkey is receiving immigrants especially from the countries in the neighbourhood such as Iraq, Iran, Russia, Bulgaria, and there are increasing numbers of immigrants coming from African countries as well. Like Greece and Spain, the geographical position of Turkey makes it a transit zone for immigrants who are heading to Central and Northern European countries.

Irregular immigrants work mainly in construction, textiles, and entertainment sectors and also they work in child and elderly care. For example, Moldovan immigrant women work as domestic workers taking care of middle and upper class families' children or the elderly (İçduygu 2003). Immigrants took the jobs that are turned down by the natives; however immigrants also compete with native labour to a certain extent in sectors such as manufacturing and construction. Although the bureaucrats have prepared a draft law on immigration, Turkey still lacks a legislation that exclusively governs immigration (and asylum) in Turkey. Therefore, unlike in Greece and Spain, rules and regulations that govern immigrants' rights are dispersed across various legal documents such as the Law on the Encouragement of Social Assistance and Solidarity (Law 3294 of 1986) and the Law on Social Insurance and General Health Insurance (Law 5510 of 2006). According to these laws immigrants need to have an identification number in order to access public health care services. Thus, irregular immigrants' right to health care is not granted in Turkey. Adding to

that, although children of irregular immigrants may be accepted in schools as "guest students" they are not allowed to receive diplomas without valid documentation. Therefore, also the right to education is imperfectly recognised for irregular immigrants' children. As a result, official treatment of irregular immigrants in Turkey is similar to that of Greece's rather than Spain's treatment of irregular immigrants.

Concerning the involvement of civil society organizations to the protection of rights of irregular immigrants, interview findings point out that as opposed to Greece and Spain, civil society in Turkey does not offer social assistance to irregular immigrants yet. Civil society organizations provide social assistance mainly to asylum seekers and fail to recognise irregular immigrants as an exclusive group that has vulnerable living conditions. Similarly rights advocacy of civil society is at its infancy: As there are few social assistance programs offered to irregular immigrants, there is also a much less developed activism (only within certain leftist organizations) supporting a better protection of irregular immigrants' rights. State bureaucrats have held consultation meetings with the civil society organizations during the preparation of the draft law; but it is not clear yet how much of civil society input has actually been incorporated within the draft law on immigration. As a final remark, in relation to court involvement on matters concerning the protection of irregular immigrants, interview findings point out that similar to Greece and Spain judicial review do not seem to be very effective in protecting or improving the rights of irregular immigrants.

CHAPTER 8

FINAL ANALYSIS & CONCLUSIONS

8.1. Introduction

This chapter provides an overall analysis of the three cases, presented separately in the previous chapters, this time in a comparative and integrated manner. The chapter also offers conclusions to the whole study.

The fundamental concern of this study was to explain the state's treatment of irregular immigrants, and the extent to which fundamental rights are respected. The study focused specifically on the influence of the democratic accountability mechanisms of civil society activism and judicial review on the treatment of irregular immigrants in order to establish a link between democratic accountability mechanisms and the treatment of irregular immigrants by examining the role of democratic accountability mechanisms (civil society activism and judicial review) in the protection of rights of irregular immigrants. The main proposition of the study was that a more active involvement or integration of democratic accountability mechanisms in the political system results in a more liberal treatment of irregular immigrants. That is, greater activism by civil society, and more frequent judicial review of policies concerning the rights of irregular immigrants, is likely to lead to

more guarantees for the protection of fundamental rights of irregular immigrants.

8.2. Rights: Treatment of Irregular Immigrants

In order to explain the differences and similarities in the three cases, in terms of treatment of irregular immigrants, the study focused on national legislation on immigration and the formal rules and regulations that govern immigrants' access to their fundamental human rights. Thus, this research did not focus on the question of whether or not irregular immigrants could in practice actually enjoy the rights granted to them on paper. Nonetheless, it acknowledges the possibility that de jure granting of rights does not necessarily guarantee de facto enjoyment of those rights by irregular migrants.[36]

The first two rights to consider are those concerning health care and education. Every human being's right to access these two social services has been formalized in the UN's Universal Declaration of Human Rights (1948) in the following manner: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control" (Article 25/1); and, "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit (Article 26/1).

[36] More discussion on this distinction will be made in the Conclusion section of this chapter.

Tables 7 and 8 below summarize the legislative framework on access to health care and education provided in chapters 5, 6 and 7 concerning the formal recognition of irregular immigrants' rights in Greece, Spain and Turkey.

Table 7: National legislation on irregular immigrants' access to public health care

Greece	Law 3386/2005: "Third-country nationals legally residing in Greece shall be insured with the relevant insurance organizations and all have the same insurance rights as Greek nationals." (article 71, para.1)
Spain	Organic Act 2/2009: "Foreigners in Spain registered on the municipal register of residents [i.e. *Padrón*] for the municipality where they have their regular abode are entitled to health care under the same conditions as Spanish citizens." (article 12/para.1) "Foreigners in Spain are entitled to emergency public health care as a result of serious illness or accident, whatever the reason, and to ongoing care up until their medical discharge." (article 12/para.2)
Turkey	Law 3294/ 1986 (The Law on the Encouragement of Social Assistance and Solidarity) provides social assistance services (health, education, shelter, food and clothes) to all disadvantaged groups who are on Turkish territory. Law 5510 of 2006 (The Law on Social Insurance and General Health Insurance) provides health services only to migrants with residence permits and to asylum seekers who have been recognized by the Ministry of Interior.

Table 8: National legislation on irregular immigrants' access to public education

Greece	Law 3386/2005: "By way of exception, children of third-country nationals may enrol in public schools with insufficient documentation when: … (case d.) They are third-country nationals residing in Greece, even if their legal residence therein has not been regulated." (article 71, para.3)
Spain	Organic Act 2/2009: "Foreigners aged under sixteen years of age have the right and duty to attend education, including access to basic, free, compulsory education. Foreigners aged under eighteen years of age also have the right to post-compulsory education. This right includes the right to obtain the corresponding academic qualification and access to the public system of grants and bursaries under the same conditions as Spanish citizens. Should they reach the age of eighteen years during the course of the academic year, they shall retain this right until conclusion thereof." (article 9/para.1)
Turkey	Primary school education is obligatory in Turkey and is open to everyone and this right is being protected by many laws and directives and also by the Turkish Constitution (article 4). However, migrant children need valid residence permits to enrol in schools and even if the children of irregular migrants may be accepted in schools as 'guest students' they may not receive any diplomas when they finish their education.

The tables show that the most liberal case is Spain in its treatment of irregular immigrants in relation to both health and education rights. In Spain, the only condition for irregular immigrants (as for any other immigrant) to access social services provided by the state is to be registered with the local *padrón*. Registration with the *padrón* does not require any residence permit so it is possible that once irregular immigrants are registered with these *padróns* they can find the opportunity to access the public health care and education systems with similar rights to Spanish people and those who legally reside in Spain. Although the police have had a right to

access these registrars since 2003, the Ministry of Interior issued a statement announcing that it will not exercise this power. Therefore irregular immigrants do not fear an immediate and real threat of deportation once they are registered in *padrón*.

In the Greek and Turkish cases, by contrast, the legal framework shaping access to these rights is more restrictive. In the Greek legislation, access to public health care is not as clearly granted to all foreigners irrespective of their legal status as it is in Spain. Specifically, public insurance is guaranteed only to those third country nationals who are "legally residing" in Greece. Most importantly, public service providers are prohibited from offering their services to irregular immigrants. These officials are also obliged by law to inform the police when they come across such immigrants. The only exception to this rule is hospitals and clinics where emergency admissions may be made. Therefore, irregular migrants may only access emergency care in Greece without being subject to the fear of scrutiny and deportation. In contrast to its strict regulations concerning health care services, Greek legislation does provide access to public education for the children of irregular immigrants.

Turkish policies are more similar to the policies in Greece than Spain. A residence permit is currently required (since late 2011) in order to receive social assistance. In other words, foreigners need an identification number in order to be able to receive treatment in hospitals. Moreover, even if the children of irregular immigrants may be enrolled in public schools as guest students they do not receive diplomas unless they provide valid identity documentation. Nonetheless, it should be noted that Turkey still does not have a specific law on immigration and asylum, which means the rights of foreigners in Turkey have not been legislated for as clearly

as in the case of Spain or Greece. Indeed, currently, multiple laws govern how irregular migrants may access rights.

Therefore, in the Greek and Turkish contexts, one conclusion is that the treatment of irregular immigrants is comparatively illiberal compared to the Spanish context, and this situation extends also to the living conditions of asylum seekers as well. Although this research was not concerned with asylum seekers or refugees, the interviews suggest that, in Greece and Turkey, under certain circumstances even asylum seekers who have officially recognized documentation cannot properly and regularly receive free social services of the state to which they are legally entitled. The conditions of access by irregular immigrants are much worse than those of asylum seekers though.

The findings of this research thus suggest that there is a significant divergence between Greece, Spain and Turkey in the way they adopt policies concerning the rights of irregular immigrants. According to the results of the analysis of policy documents, irregular migrants enjoy only moderate access to services to respond to their fundamental human rights in Spain, and a rather restricted access in Greece and Turkey.

This research did not provide answers to the question of why there is divergence among these cases, as this would require further research on the economic, cultural and political reasons behind this divergence individually. Instead, this study focused on a single political variable, i.e. democratic accountability mechanisms. More specifically, it investigated the role of civil society activism and judicial review as democratic accountability mechanisms in the official treatment and protection of the rights of irregular immigrants who are already resident and

participating in the life of these countries. The theoretical orientation behind using the concept of democratic accountability mechanisms was explained at length in the third chapter on the theoretical framework. The use of this political variable related to broader theoretical discussions that concern state and society interaction, together with agency versus structure explanations within comparative politics. The concept of democratic accountability, as it includes the impact of judicial review, does not follows a "holistic" and an "organic" view of the state, which prevents the recognition of different policy goals and principles within the state structure. In addition, the concept provides a balanced view of state and society interaction, as proposed by Migdal (1994) in his "state in society" perspective. The activism of pro-immigrant civil society groups illustrates how societal pressures may impact on the policy goals and principles of the state.

8.3. Democratic Accountability: Protection of Irregular Immigrants' Rights

The composition of the informal economy, the demand for irregular immigrant labour, cultural practices concerning foreigners, and the position of political parties towards the issue, may all be counted among different factors shaping states' treatment of irregular migrants. This research focuses on one such influence, the one created by democratic accountability mechanisms, specifically civil society activism and judicial review in this study.

8.3.1. Civil Society

This study proposed that pro-migrant civil society organizations constitute the main stakeholders on matters concerning the protection of the rights of irregular

immigrants within the country. This proposition derives from existing research focusing on (irregular) immigration and the civil society relationship. The main claim in this literature is that it is primarily civil society organizations and human rights NGOs that support the cause of irregular immigrants (see Laubenthal, 2007; Chimienti, 2011). In a recent study (Chimienti, 2011), the lack of mobilization of irregular immigrants in Copenhagen, in contrast to the existence of mobilizations in Paris and London, is explained by the fact that claims of irregular immigrants are made individually, whereas mobilization is carried out mainly by NGOs in London and, to a lesser extent, also in Paris. Therefore, through the literature one can conclude that civil society organizations emerge as the main actors in national settings that support the cause of irregular immigrants. Following that, in this study as well, one of the claims was that it is mainly civil society organizations and the political processes activated by these organizations that have the potential to improve the rights conditions of irregular immigrants. Thus, the main suggestion of this study is that political processes that might be affecting the official treatment of irregular immigrants are created by the involvement of civil society organizations in the issue. Taking this into account, the role of civil society was theorized in the following manner. Civil society influences the protection of the rights of irregular migrants in two ways: First, by offering certain social services; and secondly, by pressurising governments with various forms of social actions for the better protection of immigrants' rights.

In Greece, for example, pro-migrant civil society organizations offer a significant number of services to immigrants without permits, with different organizations providing health, education and legal services. Either these

organizations reach out to irregular immigrants or the immigrants contact them. Thus, civil society in Greece is aware of the vulnerable life situations of irregular immigrants in the country, and there are organizations that offer social assistance. Although the quality and extent of the services provided by Greek civil society do not completely correspond to those that may be provided by the state, it still makes a difference in the lives of many immigrants because Greek national legislation blocks irregular immigrants' access to any type of social service other than "emergency" health care, and even access to emergency health care is problematic. Under these circumstances, the services, especially health related services, offered by Greek civil society turns out to be rather significant in improving the life situations of irregular immigrants. The interview information also suggested that there is an intrinsic problem in the Greek system: the state is aware that civil society will intervene, hence the state refrains from expanding the services it provides. Therefore, although in the short run the provision of services by civil society seems to be a valid solution for improving access to services by irregular immigrants, in the long run, the sustainability of such a system seems to face challenges. Therefore, increasing the Greek state's involvement seems to be imperative in order to provide a sustainable service provision.

In the Spanish context, although the state allows irregular immigrants' access to certain social services, still there are civil society organizations that provide basic social assistance to immigrants without proper documentation. This shows that there is still a need for the social assistance of organizations in civil society because immigrants' access to their legal rights remains imperfect. As a matter of fact, one interview respondent specifically and continuously underlined that having rights on

paper does not guarantee access in practice. Nonetheless, the fact that the state provides a level of social assistance impacts on how civil society in Spain is involved in service provision. That is, in contrast to the Greek case, civil society in Spain complements the role of the state. For example, one of the most significant activities of Spanish civil society organizations is to inform irregular immigrants about the rights that they can enjoy in Spain. Another significant role performed by civil society organizations is to provide legal counselling and to increase the awareness of immigrants about national legislation affecting them.

The Turkish context is rather different from that in Spain and Greece in terms of the involvement of civil society on the issue. In contrast to Greece and Spain, there is almost no social assistance provided to irregular immigrants by civil society organizations. Thus, neither the state nor civil society offers any services that have the potential to improve the rights conditions of irregular immigrants. However, this situation is not only typical for irregular immigrants but is also true for almost all categories of foreigners. In other words, civil society activism addressing the rights of foreigners is still in its infancy in Turkey. The number of such organizations is very low, and most of them take asylum seekers and/or refugees rather than irregular immigrants as their target group for social assistance. As a result, existing social assistance is devoted to asylum seekers/refugees than to irregular immigrants. A number of reasons emerge in the literature to explain the distinction made between these two groups. One of the most important reasons is the fear of supporting an "illegal" person or a "terrorist" and, following that, the fear of jeopardizing relations with the state. Hence, there is a rather different perception of an irregular immigrant in Turkish civil society when compared to Greece and Spain. Irregular immigrants

are not recognised as constituting a vulnerable group who require social assistance and support. There are a very few leftist organizations within civil society that do recognize them as vulnerable and hence require assistance. However, the majority recognises that helping asylum seekers and refugees is more legitimate than helping irregular immigrants. One other reason behind such an orientation on the part of Turkish civil society is the fact that irregular immigration is not an issue at the top of the political agenda, and so civil society organizations do not focus on this issue.

The second method of involvement with the rights conditions of irregular immigrants in civil society is political action performed to bring about policy changes regarding the access to rights. That is, civil society can also improve the protection of irregular immigrants' rights through lobbying activities. Lobbying activities also have great potential to influence political discourses forming around irregular immigration.

In Greece, protest movements in favour of immigrants' rights are common. One recent (February 2011) example of that was the support certain leftist organizations provided to the hunger strikes of the irregular immigrants during the first months of 2011. Approximately 300 irregular immigrants ended a six-week hunger strike when they reached an agreement with the Greek government on residence permits (BBC News, 2011). The support of pro-migrant civil society organizations and activists was immense during this period. Greek civil society has a certain culture for organizing protest movements for the rights of immigrants. During the interviews, various respondents mentioned actions of civil disobedience on the part of workers like teachers and doctors when they refused to report the presence of irregular immigrants to the authorities, but instead provided their services to them.

However, the interviews also suggested that the role of civil society was limited in making the state increase its protection of the rights of immigrants in general and irregular immigrants in particular. There are certain human rights organizations, migrants' organizations and trade unions that lobby for the rights of immigrants in general. However, according to the responses given during the interviews, these organizations have not been effective in bringing about changes during the decision-making process on policies concerning the rights of immigrants.

Turning to Spain, the interview data suggest that the impact of civil society on immigration related matters is stronger than in Greece. It can also be said that the policy-making process in Spain is relatively more open to the voice of the civil society when compared to Greece. One of the most important findings of the interviews was that trade unions are rather significant actors, whose opinions on immigration related matters are taken into account by Spanish governments. The data from the interviews also suggest that trade unions support an immigration policy that would better protect the rights of immigrants in general. For example, respondent from one trade union stated that the organization "fights for the social and labour rights of all immigrants, including irregulars". Therefore, in contrast to the political context in Greece, in Spain, there is very influential trade union activism and lobbying for the protection of the rights of irregular immigrants. Most importantly, the interviews suggested that Spanish governments do take into account the comments and concerns of trade unions on matters of immigration.

Finally, in the case of Turkey, the role of civil society activism in improving the rights conditions of irregular immigrants is rather different from Greece and Spain. First, civil society interaction with the government on matters of migration is

only a rather recent development (post 2005). The state bureaucracy has been working on a draft immigration law since 2009, and during that process consultation meetings with civil society have taken place. Some interview respondents appreciated that such an inclusion of civil society in migration policy making would not have been even possible only a few years ago. There were those who were more enthusiastic about this consultation process, and those who were sceptical about the whole process. The sceptics are concerned about the extent to which the concerns of the civil society would actually be reflected in the final policy document. Therefore, they argued that civil society's participation in the decision-making process was more of a show than a substantial partnership.

One other important distinction between Greece, Spain and Turkey was the fact that organizations within civil society were least diversified in the Turkish context. In Greece and Spain, there are human rights organizations, migrant organizations, international organizations, an ombudsman, and trade unions, who are all more or less involved with immigration policy. Trade Unions, migrant organizations are much more integrated in the policy-making process in the Spanish context, and to a lesser extent in Greece. However, in Turkey, there are only a few human rights organizations other than international organizations like UNHCR and IOM that are involved with migration related matters. In contrast to the other two countries, Turkish trade unions, for example, are not active in immigration policy related matters. There are no migrant organizations other than small informal groups of some ethnic groups. Moreover, the existing organizations work more on asylum related policies than on irregular immigration in particular.

8.3.2. Judicial Review

When it comes to judicial review, the other type of democratic accountability mechanism (other than civil society participation) considered in this research, the theoretical chapter suggested that court rulings, also have the potential to improve the rights conditions of irregular immigrants by reviewing governmental decisions. Court decisions that favour the rights of irregular immigrants would be derived from the democratic constitutions of the states that better protect human rights when compared to specific immigration legislation, and also from international human rights treaties, whose discourse targets the rights of man rather than rights of citizen. Therefore, judicial review has the potential to put pressure on governments to enact national immigration legislation more in line with democratic constitutions and the international human rights regime.

The interview data on judicial review suggested that the respondents were not familiar with any cases of judicial review pursuing justice or promoting the rights of irregular immigrants. This finding suggests that in none of the country cases, court rulings or judicial review are an important democratic accountability mechanism blocking the introduction of more restrictive policies towards irregular immigrants.

In Greece, one respondent noted that even immigrants with legal documents to stay in the country do not go to the courts when faced with discrimination. The respondent explained this situation by the lack of knowledge on the part of the immigrants about their rights, and also the lack of practical knowledge on how to fight back through the legal system. In the Spanish context as well, respondents could not recall any instance in which a court gave a favourable opinion on the protection of the rights of irregular immigrants. Nonetheless, some respondents

reported that courts are involved in the migration policy-making process through appeal applications made by certain civil society organizations. The Turkish context was also similar to Greece and Spain in the way that the courts did not emerge as an influential mechanism protecting the rights of irregular immigrants through judicial review of governmental decisions. However, in the Turkish context, contrary to Spain and Greece, this finding was also related with the lack of any single specific piece of legislation on immigration. One interesting finding from the Turkish case is that when appeal applications are made in relation to the issue of asylum they are made directly to the European Court of Human Rights. Thus, it was not Turkey's national courts, but rather the judicial review of a supranational court that emerged as the influential democratic accountability mechanism on matters concerning asylum in this case.

Thus, although the study found that courts are not influential democratic accountability mechanisms for improving the rights conditions of irregular immigrants, in other migration related cases, such as in the case of asylum seekers and refugees, courts are involved in the policy making process and they appear to be an important mechanism that prevents the development of ever more restrictive migration policies. This argument especially holds in the case of Spain and Turkey. It is important to note that, in the Turkish case, it is the European Court of Human Rights, through its continuous criticisms of Turkey on matters of asylum, which has triggered further debate, as well as action among policy makers and scholars, to improve the protection of the rights of asylum seekers in Turkey.

This study focused on judicial review only in so far as it concerned the rights of irregular immigrants living within the receiving country. By collecting the views

of immigration experts on how judicial review functions, this study aimed to reveal the extent to which judicial activism could improve the rights of irregular immigrants. However, none of the interviewees appeared to have knowledge concerning the actions of the courts in this area, although there is a substantial academic literature examining the role of courts, or judicial review, on the protection of foreigners' rights in general. Some of the respondents referred to judicial activism on matters concerning asylum, refugees and other matters concerning documented immigration. In addition, the information collected in this study confirmed the findings of the literature, which notes that judicial review has the potential to restrict state action by dictating more liberal policies; however, this is true mostly for when immigration related matters intersect with those of asylum. The involvement of courts on matters of migration in general, such as asylum and refugees, needs to be further studied for Greece, Spain and Turkey, as this focus lay beyond the scope of the present study. At this point, based on the accounts in the interview data, one can still conclude that, for all three of the cases, judicial review did not function as an influential democratic accountability mechanism that could change or restrict national legislation blocking irregular immigrants' access to their fundamental human rights.

8.4. On the relationship between the divergence in treatment of irregular migrants and the operation of democratic accountability mechanisms

My analysis of the treatment of those irregular immigrants already living within the host country showed that Spain is the most liberal case, followed by Greece and then Turkey. The analysis involved more descriptive inference than

causal, as the main question of the research was how democratic accountability mechanisms get integrated into the processes of the treatment of irregular immigrants or the protection of irregular immigrants' fundamental human rights. In order to answer this question, this study examined the role of democratic accountability mechanisms in improving the rights of irregular migrants. Table 9 below briefly summarizes the main findings in relation to the questions of the study regarding irregular immigrants.

Table 9: Comparative findings

	Greece	**Spain**	**Turkey**
Treatment of Irregular Immigrants	Repressive case	Liberal case	Relatively Repressive case
Civil Society's social assistance provided to irregular immigrants	Active and supplementing state inactivity.	Active and complementing state assistance	Almost no social assistance
Lobbying activities of Civil Society for the rights of irregular immigrants.	Activism but not very effective	Trade union activism	Almost no activism
Judicial review	Unavailable	Unavailable	Unavailable

Across all the cases, judicial review was found to be an ineffective democratic accountability mechanism for directly targeting the protection of the fundamental human rights of irregular immigrants. For that matter, there was not a very meaningful relationship between official treatment and judicial review, at least within the cases under concern. When we consider this from the perspective of the literature, which theorizes on the state and the production of a political outcome, the

reason for looking at the impact of judicial review was to "disaggragate" the state (Migdal, 1994), rather than to adopt a holistic view (Skocpol, 1985). Thus, I predicted that courts would have a different policy orientation and goal compared to other branches of the state, such as the legislature or the executive. However, on this particular political outcome, protection of the rights of irregular immigrants, although the courts do not seem to push state policy in a different direction, this does not necessarily mean that one should treat the state as a holistic entity with a fixed ideology; rather these findings can only be interpreted as indicating that, on this particular political outcome, the courts do not seem to have much of a separate influence than executive or legislative branches of state. Further research across a larger group of cases is necessary on this relationship specifically, in order to support or refute this conclusion.

On the other hand, when it comes to the relationship between official treatment and civil society activism, the second and third rows in Table 9 shows that there were different interactions across the three cases. In particular, the table shows that, in the most liberal case of Spain, there was influential trade union activism, in the form of certain lobbying activities for the rights of irregular immigrants. In contrast, in the less liberal cases, Greece and Turkey, the lobbying activities of civil society were relatively less developed. This may lead one to ask whether or not civil society activism on the protection of the rights of irregular immigrants can actually lead to differences in the way states either protect or disregard the fundamental human rights of irregular immigrants. Could it be that, when there is a divergence between the cases in terms of the liberalness of official attitudes adopted towards irregular immigrants, then civil society activism is more developed in the liberal

case? The discussion here, however, does not seek to propose an invariant causal relationship in answering such a question, but rather suggests something similar to a probabilistic causal argument that depicts a political mechanism, i.e. civil society activism, having the potential to increase the likelihood of a certain political outcome, i.e. more liberal official treatment. These findings, and the related interpretation, are also in line with previous theoretical discussions on the state and society interaction. Specifically, the activism of pro-immigrant civil society has the potential to pull the political outcome closer to more liberal goals and principles than the ones adopted by the state. Thus, this tells us that, Migdal (1994) argues, the state is also molded by the society in which it is embedded, as well as itself molding the society. In other words, the goals and policy orientations of the state may change as a result of its engagement with different social groups, and this study has provided a comparative case study of this theoretical orientation.

The findings of this research suggest that civil society does have the potential to improve the rights conditions of irregular immigrants. In the Spanish context, the study revealed influential actors within the civil society pressing for the rights of all immigrants, including the irregular ones. However, I would nevertheless argue that one cannot conclude that it was because of civil society lobbying that there is relatively more liberal treatment in the Spanish context. As well as the possibility that many other intervening factors affected Spanish treatment of immigrants, this treatment might itself also be affecting the current state of civil society activism. In other words, it could be the case that, when the state grants certain rights to irregular immigrants and is more attentive of the rights of irregular immigrants, then it may also become more receptive of the criticisms of the civil society, and it may more

easily open venues for lobbying by civil society groups pressing for more immigrant rights.

8.5. Concluding Remarks on the Study

Overall, this study aimed to highlight the rather exclusionary nature of the irregular immigration category within the current international mobility of people. As Criss notes,

> [t]oday, despite all the hype of globalization, humanistic and political cosmopolitanism is absent. The fast pace of our world also brings about simplistic and categorical sociopolitical descriptions that are often hostile and divisive. The current stage of globalization is about finance, economics, and technology; it has little to do with human beings (Criss, 2008: 67-8).

Her point highlights the situation of irregular immigrants in the current context of international immigration. The irregular immigrant, as a sociopolitical category, has become constructed in terms of exclusionary descriptions and policies. Irregular immigrants, as they are not 'regular' and/or 'legal' participants in the global flow of people, face policies that restrict the full possession of their fundamental human rights. This situation stands in marked contrast to the always regular and smooth mobility of goods, capital and services. This study investigated various restrictions on the rights of irregular immigrants by focusing on three receiving countries, and on the particular mechanisms that seek to resist and change this exclusionary nature of the categorization of irregular immigration. In more specific terms, as discussed elsewhere in this study, this study investigated whether there was divergence (or convergence) between Greece, Spain and Turkey in the way they treat irregular migrants in relation to the recognition of these immigrants' fundamental human rights, and what role democratic accountability mechanisms (civil society

activism and judicial review) have in the protection of rights of irregular immigrants.

As the number of irregular immigrants has grown in receiving states as a result of the current international mobility of people, political science studies on irregular immigration have focused relatively more on the identification and control policies of states, rather than on the political significance of irregular immigrants as recipients of human rights. Moreover, studies focusing on the vulnerabilities of irregular immigrants and their life situations most of the time have neglected the political dimension of the issue, in the sense of considering what the state does concerning this issue, and what the liberal constraints there are on the state, pressuring it for better treatment of irregular immigrants. This study has, accordingly, attempted to fill these gaps in the literature on irregular immigration. It provided a contribution to the understanding of international irregular immigration through its unique research question, which investigated the basic human rights granted to irregular immigrants, and the liberal constraints on states that bring about a better protection of these rights. In particular, this study evaluated the role of civil society activism and judicial review on the protection of the rights of irregular immigrants primarily through examination of policy documents and in-depth interviews with migration experts. The study, by utilising a comparative perspective, was able to reveal important contrasts between the cases, thereby contributing to the overall scholarly understanding of irregular immigration, in three different national settings. The study has contributed to knowledge on irregular immigration by reconstructing the irregular immigrant category as a possessor of human rights before states that tend to focus exclusively on territorial control and sovereignty in their relationships with irregular immigrants. The study also brought into consideration

civil society and judicial review as democratic accountability mechanisms and liberal constraints acting upon the state in this relationship. This provided a novel focus to theorizing on immigration policies. This study's final, and also very important contribution, was to provide important contrasts between Greece, Spain and Turkey. In doing so it has broadened our knowledge of immigration practices and patterns in these countries in a comparative manner.

8.5.1. Reservations

One should also refer to a couple of reservations concerning this study. One very important reservation derives from the distinction between de jure versus de facto access to fundamental human rights. This study exclusively focused on the de jure granting of rights to irregular immigrants. It investigated national immigration laws and regulations in Greece, Spain and Turkey in order to reveal the extent of official rights' protection. In other words, it focused exclusively on what states claim to do or not to do legally. However, what is going on in practice may be different from such official statements, as laid down in immigration laws and regulations. Thus, there may (or may not) be huge discrepancies between the actual practice of irregular immigrants' access to their fundamental human rights, and what is being provided in the law. For example, this study found a distinction between Greece, Spain and Turkey in each state's treatment of irregular immigrants (see Tables 7 and 8). Spain was the most liberal case where irregular immigrants have the right to public health care and education once they register in local registrars. On the other hand, in Greece and Turkey, the laws and regulations carry rather restrictive measures that block access to these rights. Thus, even though there is this distinction

between the countries on paper, it is possible that, in practice, access to rights may be as problematic in Spain as in Greece or Turkey. In other words, there may not be any difference between these countries in terms of de facto access to rights, even though there is a divergence in terms of de jure provision of those rights. As justification for not investigating this issue, it can be argued that this was beyond the scope of this study. Having in mind this distinction from the start of the research, the study intentionally and exclusively focused on the de jure provision of rights, because the purpose was to show each state's official position before the recognition of irregular immigrants as recipients of human rights. Thus, the main idea behind this exclusive focus was to understand if the category of irregular immigration does actually create a divisive and exclusionary official attitude while protecting individuals' rights. That is why the research focused only on de jure provision, although it of course recognized the significance of de facto enjoyment for the actual living conditions of irregular immigrants.

The second reservation relates to the previous one: The study may be criticised for not conducting interviews with immigrants themselves. Conducting in-depth interviews with irregular immigrants would probably have provided a better understanding of the actual living conditions of irregular immigrants: to what extent they could enjoy public services of health care and education; what the other channels were through which they could meet their needs relating to health care and education. Moreover, interviews with immigrants would also have offered a complementary understanding of the role of civil society and judicial review in advocating their cause: whether or not there were civil society organizations, activists or lawyers from whom they could seek assistance; where there were any

organizations that provided them with health care and education services. These and similar questions would of course have usefully complemented the information derived from the interviews with immigration experts. However, there were also some justifications for not conducting interviews with immigrants. First, in relation to the previous reservation and its justification, depicting the actual living situations of irregular immigrants was considered to be beyond the scope of this study, as there were other important questions that required the exclusive attention of this research. Thus, as I will argue in the following paragraphs, this study may act instead to inspire further studies in this matter. Secondly, although information from immigrants themselves on civil society and judicial review would surely have contributed valuably to the understanding of liberal constraints on the states, conducting interviews with immigrants would not have been possible due to practical constraints concerning time and finances. The field research in Spain and Greece had to be conducted in just two weeks as a result of a limited research budget. Within this time, it would have been impossible to reach immigrants as well as the immigration experts, and to have gained their trust and consent for participation in this study. Furthermore, there would have been language barriers in communicating with these immigrants. In Greece and Spain, sometimes communication was difficult even with immigration experts, who have a good command of English. It would have been particularly difficult to communicate with immigrants without the help of a local who spoke Greek or Spanish, so arranging such interpretation would not have been possible in the two weeks allotted for field work. Interviews with immigrants could have been done in Turkey as the material costs and time constraints were minimal compared to the other two countries. However, this would have made the field

research in Turkey not comparable to the field research in Greece and Spain. For all these reasons, I chose not to include interviews with irregular immigrants.

8.5.2. Further Studies

This study has a strong potential to inspire a diversity of further studies. First, the research questions could be investigated in other contexts as well. This study focused on Greece, Spain and Turkey, on the basis of categorizing them as related Southern European countries. It would be very interesting to repeat the same research in Italy and Portugal as well, as these are also important destinations for irregular immigrants to Southern Europe. Similarities and contrasts that would be revealed by such research could contribute to academic understanding of the de jure provision of rights, together with the role of democratic accountability mechanisms on the protection and extension of such rights. At the same time, it would perhaps be much more interesting to conduct the same research in Northern European countries, in the expectation that in countries such as Germany, the Netherlands, Sweden and Norway sharper contrasts could arise compared to those found between Southern European countries.

As an illustration, the pilot study of this research was conducted in the winter of 2009 in Sweden, where I conducted an in-depth interview with an immigration expert, who was a former director of the now closed-down Integration Board of Sweden. The interview information showed that in Sweden as well there are civil society organizations and activists that lobby for and assist irregular immigrants for the protection of their rights. However, these issues were very sensitive at the time as there were almost no rights for irregular immigrants, and the Swedish state was very

reluctant to grant any such rights. Consequently, irregular immigrants were very much marginalized and criminalized, and their existence remained relatively more underground than in the three cases I eventually investigated. In other words, the social and political position of irregular immigrants, and the nature of civil society activism on the matter, seemed to be very different in Sweden when compared to Spain, Greece or Turkey. Thus, a study comparing Scandinavian practice with that of the Southern European states would probably provide some illuminating contrasts and explanations concerning the issue of irregular immigrants' rights.

Another rather different study could be conducted specifically on the immigrant experience. As justified in the previous section, this study did not conduct any interviews with irregular immigrants so it was unable to evaluate both the de facto provision of rights and the immigrants' de facto enjoyment of them, and their experience with democratic accountability mechanisms. Thus, one further study could investigate, in the same national contexts (or for others as well), to what extent de jure provision of rights parallels the de facto enjoyment of these rights by utilising interviews with irregular immigrants, who would tell their story of the extent to which they are able to access the rights granted to them on paper, and how. Such a study would also directly contribute to the literature on the life situations of irregular immigrants. A second further study could utilize in-depth interviews with irregular immigrants to investigate immigrants' experience with democratic accountability mechanisms, which work in favour of protection of immigrants' rights.

To conclude, in both its methodology and its findings, this study provides inspiration for various directions of further empirical research on irregular immigration that could improve current scholarly knowledge, which would also

contribute to theoretical views on key issues, such as cosmopolitanism, world citizenship and human rights.

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APPENDIX A

INTERVIEW QUESTIONS

- *Policy making in general*

  How would you describe the migration policy-making process in your country? Who are the main stakeholders in this policy-making process?

  How would you describe the official attitude towards the issue of irregular migration?

- *The EU*

  Has there been any change on irregular migration policy with more EU involvement, especially with the enforcement of the Amsterdam Treaty of the EU?

  Do you think the EU has a positive influence on protecting the fundamental rights of irregular migrants?

  How does the EU affect the nature of migration policies in your country?

- *When it comes to undocumented migrants who are already within the country...*

  which rights can irregular migrants enjoy in Spain? Do they have access to health care (beyond emergency services) and access to education for their children?

- *Courts*

  Can undocumented migrants freely assert their rights deriving from international norms in courts and in the appeals courts? Has there been any such incident?

  If there is/would be such cases, do you think court rulings, by implementing universal human rights, could bring about a policy change in terms of the protection of the rights of irregular migrants?

- *Civil Society/NGOs*

  How influential or successful do you think civil society organizations are in advocating the fundamental rights of irregular migrants?

Do you think they are influential enough to make a policy change on that issue? (Are they powerful stakeholders in the policy-making process? Do official authorities negotiate with them while making policy on irregular migration?)

How influential are migrant organizations while advocating the rights of irregular migrants?

- *Trade Unions*

  Do trade unions advocate the fundamental rights of irregular migrants? If yes, are they influential enough to negotiate policies in favour of the fundamental rights of irregular migrants? Have these policies been accepted?

- *Public Opinion*

  How would you describe the attitude of people towards irregular migrants?

  Do you think the public would be in favour of irregular migrants' access to health care beyond emergency services, and access to education?

  Would public opinion be opposed to massive expulsions of irregular migrants? If yes, why; if not, why not?

APPENDIX B

LIST OF INTERVIEWS

Greece

Trade Unions

GSEE - the General Confederation of Greek Workers

Ombudsman

The Greek Ombudsman

International Organizations

The United Nations High Commissioner for Refugees

International Non-Governmental Organizations

Hellenic Red Cross

Non-Governmental Organizations

Praksis (Projects of Development, Social Support and Medical Cooperation)
HLHR-KEMO Hellenic League for Human Rights

Other NGOs: Migrant Organizations

Greek Forum of Migrants
Somali Community

University/ Research Centre

Spain

Trade Unions

CCOO (Confederación Sindical de Comisiones Obreras) – Trade Union Confederation of Workers' Commissions

Ombudsman

The Spanish Ombudsman

International Organizations

The United Nations High Commissioner for Refugees

International Non-Governmental Organizations
Caritas

Non-Governmental Organizations
SOS Racismo

Governmental Organizations
Secretary of State for Immigration and Emigration

University/ Research Centre

Turkey

International Organizations
The United Nations High Commissioner for Refugees

International Non-Governmental Organizations
Caritas

Non-Governmental Organizations
Sığınmacılar ve Göçmenlerle Dayanışma Derneği (Association for Solidarity with Asylum-Seekers and Migrants)
Helsinki Yurttaşlar Derneği (Helsinki Citizens Assembly)
Mültecilerle Dayanışma Derneği (Mülteci-der) (Association for Solidarity with Refugees)
A Church Organization

Semi-governmental Organizations
The Police Academy

University/ Research Centre

APPENDIX C

LIST OF THE LEGAL DOCUMENTS STUDIED FOR THIS RESEARCH

Greece

Law 2910/2001. Entry and Stay of Aliens in Greek Territory. Acquisition of Greek Citizenship by Naturalisation and Other Provisions (Official Gazette 91, A')
As amended by Law 3013/2002 (Official Gazette 102, A')
As amended by Law 3074/2002 (Official Gazette 296, A')
As amended by Law 3103/2003 (Official Gazette 23, A')
As amended by Law 3146/2003 (Official Gazette 125, A')

Law 3386/2005. Entry, residence and social integration of third-country nationals in the Hellenic Territory.

Spain

19949 Organic Act 2/2009, of 11 December 2009, reforming Organic Act 4/2000, of 11 January 2000, on the rights and liberties of foreigners in Spain and their social integration.

Turkey

Law 3294 of 1986, the Law on the Encouragement of Social Assistance and Solidarity

Law 5510 of 2006, the Law on Social Insurance and General Health Insurance